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THE IOWA JOURNAL OF HISTORY
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THE
IOWA JOURNAL
OF
HISTORY AND POLITICS

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THE IOWA JOURNAL OF HISTORY AND POLITICS
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HISTORICAL BACKGROUND OF THE COUNTY IN IOWA

At the beginning of the seventeenth century the lowest civil divisions for the management of local affairs in England were known by various names according to purpose or locality — towns, townships, tithings, manors, boroughs, and the ecclesiastical subdivisions called parishes. In the union of church and state the parishes came to be used as civil divisions and were the successors of the towns or townships.

In the towns or parishes, the smallest units of government in the rural districts, local affairs were managed by the people of the community in a democratic assembly or town meeting where officers were selected and policies determined. It was the function of the parish or town to deal with matters concerning church property and administration, to care for roads and bridges, to provide poor relief, and to have charge of such public elementary education as was provided. The officers chosen at the town meeting included the vestry clerk, the church wardens, beadles, and sextons, and the local constable, though the latter officer was frequently chosen by the justices of the peace.

The borough was the unit of local government in the urban areas but it was relatively unimportant. Its government was in the hands of a close corporation in which few of the inhabitants had any share. Its chief function was to elect representatives to the House of Commons. The hundred, with its high constable, serving as a military and

police district continued to exist, but as a relatively unimportant area.

The county, however, was the chief area of local administration and was the most important institution of local government known to the colonists who came to America. It did not, however, possess a real representative body of its own as it had at an earlier time when the county court was in its prime. Moreover the lord-lieutenant, the sheriff, and the coroner had also declined in importance and the justices of the peace, originating probably as early as the thirteenth century, had become the important officers of administration. These justices were appointed by the Crown. They met in quarter sessions and, in addition to important judicial powers, performed the duties of the old shire court. They provided roads and bridges, levied county taxes, managed county finances, provided public buildings, granted licenses, bound apprentices, provided for the poor, and supervised the parish officers. These justices served without pay and were generally the most prominent men in the county. They were under the supervision of and subject to dismissal by the Privy Council but the office was burdensome and so they were left free to assume a position of considerable independence.

COUNTY GOVERNMENT IN THE COLONIES¹

These institutions of local government served as the bases upon which the colonists in the New World erected governmental structures of their own. At first there was no differentiation between local and central governments since the colonists of a new settlement had only local prob-

¹ In the preparation of this section of the monograph Howard's *Local Constitutional History of the United States*, Fairlie's *Local Government in Counties, Towns, and Villages*, and James's *Local Government in the United States* have been used extensively.

lems to consider. But as the population increased and the number of settlements multiplied central governments began to have a part in the control. Indeed, central colonial governments sometimes developed out of a union of settlements.

The colonists in the various parts of the country modified the institutions brought over from the mother country in such a manner as to adapt them to their peculiar needs and this resulted in the development of several systems with distinct characteristics which have been perpetuated in the States down to the present time. Perhaps the most important factors influencing the character of the early settlements were the condition and character of the colonists themselves, and the characteristics of the country in which they settled. Altogether there were four different plans for local government adopted in the English colonies and these four plans are now the forms of local administration throughout the United States.

The New England or Town System.—In New England the chief unit of local government was the town, although the county was also organized as in England. The New England colonist belonged largely to the middle class in England and came to America from motives relating to conscience rather than from a desire for material gain. He was, therefore, relatively free from caste feeling and inclined toward democracy. Land was frequently granted to groups of individuals for their joint benefit and this tended to develop a community consciousness. Neither soil nor climatic conditions were favorable to agricultural development and continual danger from hostile Indians discouraged isolated dwellings. As a result of these conditions settlements were made in compact communities in which the church or meeting house was the center. The local affairs

were managed in the town meeting attended by all the inhabitants who were authorized to take part in public affairs. In this meeting officers were elected and measures were passed authorizing the carrying out of certain business.

The most important town officers were the selectmen — from three to thirteen in number — an executive body to carry out the expressed will of the town meeting. The duties of this body varied but at times it did nearly anything that the town meeting could do. The selectmen administered the local finances, served as legal agents of the town, administered the town lands, and acted as election officers. They appointed minor officers and were at times designated as the agents of the central government.

A list of the other officers of the ordinary New England town would include a constable, a town clerk, a treasurer, assessors, collectors, surveyors of highways, and many of less importance.

Although the town was the chief unit of local government in New England it was not for long the only subdivision of the colonies. The situation in Massachusetts illustrates the typical transformation in the New England colonies. As early as 1636 Massachusetts was divided into three military districts, and four judicial districts in each of which there was established a quarterly court. Counties were definitely organized in 1643, four being organized at this time and additional ones being afterward established. These counties were organized both as military and judicial districts and the quarterly courts developed into the county courts. The county was an important unit in fiscal administration and it was also the district for the registration of land titles and, after 1685, for probate administration. The court of quarter sessions became in fact the court of general sessions. It was composed of justices appointed by the

Governor and had jurisdiction over the laying out of highways, the licensing of inns, and of liquor venders, the approval of town by-laws, the care of the poor in certain cases, and the determination of the tax rate and its apportionment among the various towns. This court of general sessions resembled the English court of quarter sessions both in its powers and composition. Such county officers as sheriff and treasurer were provided for and although there was at first no representative body for county affairs there was established sometime before 1650 a system of representative commissioners from each town who met to equalize the apportionment of taxes between the various towns.

The Southern or County System.—In the county type of local government the county is the chief unit or basis of local activity. This type arose in the South where towns were few in number, developing first and most characteristically in Virginia. In this colony the first subdivisions were called plantations and hundreds but these districts soon became parishes each of which was both an ecclesiastical and civil unit having a vestry, a minister, and church wardens for the management of local affairs. The parishes performed many important functions but owing to the prevalence of large plantations and the widely scattered population the county became the important unit of local administration at an early date and local government became representative instead of democratic.

The first counties in Virginia were established in 1634 when the colony was divided into eight shires or counties. These counties became the units of representation in the colonial assembly and the units of administration for military, judicial, highway, and fiscal matters. The county officers were the lieutenant, the sheriff, justices of the peace, and the coroner. These officers were appointed by

the Governor of the colony upon recommendation of the justices of the peace which latter officers became a self perpetuating body, usually of aristocratic planters, controlling the whole county administration.

The justices of the peace — usually eight in number — formed a county court or board having general supervision over county affairs. The sheriff was the chief executive officer of the court and of the county, as well as county collector and treasurer. The lieutenant was primarily a military officer although possessed of certain judicial functions.

In local government of this type the county overshadowed the parish. Townships such as exist in the middle west to-day did not exist. Towns or villages were few and town meetings were not held. No other system of local government placed the county in so important a position as it held in the system of pure county government which arose in colonial Virginia and spread to the other southern colonies. This system was characterized by its centralized, unrepresentative, and aristocratic character in strong contrast to the New England town system based on pure democracy.

Virginia and Massachusetts were widely separated and differences in conditions and people made for distinctly different types of local government. Between these two extremes lay the important middle colonies of New York and Pennsylvania. The people of these colonies developed their own systems of local government and in each they combined some of the principles of the systems already considered with certain characteristics developed by themselves. The result was that there came to be two distinct types of mixed systems of local government. In these colonies both the county and the town or township served as units of local government, the county being a less im-

portant area than in the South but more important than in New England, while the town or township played a less important part than in New England but was more important than in the South.

The New York or the Supervisor Plan.— County government was definitely established in New York in 1683 when ten counties with appointive justices exercising both administrative and judicial functions were created, and a sheriff with the usual powers was provided. In 1691 a system of elective county boards of town supervisors was provided which was to become the distinctive feature in the local government of New York and in many other States. The new system provided for each county a body of elected freeholders — one from each town — to supervise, levy, and assess the local taxes for county purposes. Each township chose one supervisor and these representatives formed the county board of supervisors to which was given general control of county affairs. That is officials of the townships were authorized to conduct the county business. The justices of the peace were not at first disturbed but their administrative functions were gradually transferred to the supervisors leaving to the justices only judicial powers, which were also limited by the development of other courts. With the development of these elective township supervisors as the county board the county became the center of political activity. This system emphasized the township. Town meetings were held and played a more important part than in any other State outside of New England.

The Pennsylvania or Commissioner Plan.— In Pennsylvania a combined type of local government arose in which the county was a more important unit than the town or township. Pennsylvania was settled in the same way as

New York and developed similar institutions but the county was emphasized because her people came more under the influence of the South than of New England. Historically, the county arose in Pennsylvania before the town developed. Town meetings were never held as they were in New York and the most significant feature in the system of local government was provided in 1724 when each county was authorized to elect three commissioners at large to manage the fiscal affairs of the county in place of the justices of the peace. This body, like the county board of township supervisors in New York, became the chief administrative authority of the county. But in no sense were the commissioners representative of townships. They constituted a county board for the conduct of county business but under a system clearly distinguished from the supervisor system of New York. Both of these systems were to spread to other States which were in turn to influence local government in Iowa.

Of these four systems, local government of the town type attained its greatest perfection in colonial Massachusetts; while the pure county type was most perfectly worked out in Virginia. The combined systems attained their greatest perfection in New York and Pennsylvania. In each of the three sections local institutions were patterned after the type perfected by the leading colony or colonies of the section.

THE SPREAD OF LOCAL GOVERNMENT WESTWARD

As the country to the west of the original colonies was explored and settled local governmental systems were carried along with the settlers and adapted to their needs. In this process the New England system of town government in its pure form never flourished. In a modified form it attained success in New York, New Jersey, and later in Michigan and other States under the designation of the

New York or supervisor system, but attempts to transplant town meetings have largely failed.

The pure county system spread from Virginia throughout the South and the Southwest but in most of the States in which the county was adopted as the chief unit of local government there has been a tendency for the county type to be modified in the direction of the county-township combination type.

The Northwest Territory including the region which was later to constitute the States of Ohio, Indiana, Michigan, Illinois, and Wisconsin was established in 1787 but the territory remained undivided for a period of thirteen years. During this period, however, local institutions were planted. The famous "Northwest Ordinance" gave the Governor and Judges power to adopt and publish laws to be enforced in the Territory. Under this authorization some eighty-five laws most of which dealt with local affairs and local government were adopted and published. The Governor alone was authorized to lay out counties and townships and the first county — Washington, by name — was established in 1788. In the first county governments established in the Northwest Territory the chief factor was the General Court of Quarter Sessions which was given authority with regard to highways, licenses, ferry rates, poor relief, elections, and fiscal affairs.²

In addition to the General Court of Quarter Sessions, there was a Court of Common Pleas, a Court of Probate, an Orphans' Court, and the courts of justices of the peace. The territorial jurisdiction of all of these courts was co-extensive with the county. In addition to the justices of the

² Chase's *Statutes of Ohio*, Vol. I, pp. 91-210.

Concerning the power of the Governor and Judges to adopt and publish laws and relative to their subsequent acts, Chase, in his *Preliminary Sketch of the History of Ohio*, says: "The governor and judges did not strictly confine themselves within the limits of their legislative authority, as prescribed by the

peace there was in each county a sheriff, a coroner, a treasurer, a recorder of deeds, and a judge of probate.³

This system of local government characterized by the dominance of the General Court of Quarter Sessions and marked by centralized county government with little power in the hands of the people was essentially the county type of local government common to colonial Virginia.

Beginning in 1795, however, there was a gradual transformation from the pure county system of Virginia into the county-township type of Pennsylvania and on December 19, 1799, an act was approved which provided for the appointment of three county commissioners with authority to assess property, levy taxes, and audit accounts and claims. The General Court of Quarter Sessions, however, retained considerable fiscal authority since it could appoint the county commissioners and hear appeals from them. Ohio was admitted into the Union as a State in 1803 and in 1804 a board of three elective county commissioners was established and vested with the fiscal and administrative authority of the old Court of Quarter Sessions. This completed the establishment of the Pennsylvania type of county-township government in Ohio.⁴

In Indiana the movement followed that in Ohio. Set off as a separate Territory in 1800 Indiana started out with the local institutions possessed by the Northwest Territory but after its admission into the Union as a State in 1816 the work of establishing the Pennsylvania system of local government was soon completed. Illinois became a separate

ordinance. When they did not find laws of the original states suited to the condition of the country, they supplied the want by enactments of their own. The earliest laws, from 1788 to 1795, were all thus enacted."—Chase's *Statutes of Ohio*, Vol. I, pp. 19, 20.

³ Chase's *Statutes of Ohio*, Vol. I, pp. 94, 96, 102, 107, 117, 118, 159, 167.

⁴ Chase's *Statutes of Ohio*, Vol. I, Ch. CXI, pp. 272-279, Ch. CLXIII, and pp. 355, 410.

Territory in 1809 and a State in 1818. The southern part of this State, settled by immigrants from Virginia and Kentucky, adopted a modified form of county government which soon became the Pennsylvania system in fact. The northern counties, settled after 1818 by immigrants from the northern States, favored the New York system of township-county government, and a struggle ensued between these rival types of local government which resulted in a constitutional provision for county option or self determination as far as the type of county government was concerned.⁵

Michigan became a separate Territory in 1805 but was not admitted as a State until 1837. Together with Wisconsin and northern Illinois, Michigan was settled from New England and New York and therefore quite naturally adopted the system of local government with which the settlers were familiar. This system was different from that adopted in Ohio, Indiana, and southern Illinois. In 1817 a County Court of General Quarter Sessions of the Peace was established as the chief administrative body for the county. In 1818 the General Court of Quarter Sessions was superseded by a county board of three commissioners which was in turn superseded in 1827 by the elective township-county system of local government of the New York type which since that time has been retained.⁶

In this type of local government the township is incorporated as a body politic, and electors of the township have power to elect township officers and to regulate local affairs in township meetings. The county is also an incorporated body politic having a county board of township supervisors and ten or twelve other elective county officers. The county

⁵ Fairlie's *Local Government in Counties, Towns, and Villages*, p. 37.

⁶ *Laws of the Territory of Michigan*, Vol. I, p. 184, Vol. II, pp. 109-114, 130, 583.

board is the chief administrative authority and while the county is a more important unit of government than the township, the latter has much more power than in the rival county-township type, which has no township meeting at all.

While Iowa was a part of the Territory of Michigan from 1834 to 1836 this was the system of local government in vogue and it would not be strange if the system established in the new counties created in Iowa during the period mentioned bore marks of similarity to that then operative in Michigan.

Wisconsin, the last State to be carved out of the Old Northwest Territory, belonged successively to the Northwest Territory, to Indiana, Illinois, and Michigan Territories, being a part of the latter jurisdiction from 1818 to 1836. Set off as a separate Territory in 1836, Wisconsin became a State in 1848.⁷ Iowa was a part of the Wisconsin Territory from 1836 to 1838. In 1837 the supervisor system of local government was replaced in Wisconsin Territory by the commissioner system which continued until 1841, three years after Iowa was set up as a separate Territory. Iowa naturally received her first settlers and first political institutions from the Northwest Territory and was very much affected by the movements that were taking place in the States and Territories of this region.⁸

In this connection it is of interest to note the spread of the two types of combined systems of local government westward. The great north central States from Ohio to the coast established local institutions patterned chiefly after those of New York or Pennsylvania. That is to say, both

⁷ Thwaites's *The Division of the Northwest into States in How George Rogers Clark Won the Northwest*, pp. 75-111.

⁸ *Laws of the Territory of Wisconsin, 1836-1838*, p. 138; Spencer's *Local Government in Wisconsin* in the *Johns Hopkins University Studies in Historical and Political Science*, Vol. VIII, pp. 96, 97.

the county and the township were established and given important functions to exercise, although many variations from type appeared in the new States.

Of the two combined systems, the New York or township-county type has been generally adopted in Michigan, Wisconsin, northern Illinois, and Nebraska. In some of these States a rudimentary town or township meeting is attempted. In all of them the county is governed by a board of supervisors representing the component townships. In all of them, also, the county is a more important unit than the township.

The second combined system spread from Pennsylvania westward and has been adopted as the prevailing type of local government in Ohio, Indiana, southern Illinois, Iowa, Kansas, and Missouri, and it seems destined to supersede the pure county type all over the West and over much of the South.

No town meeting is attempted in States having the county-township type. The chief factor in local government is a small board of county commissioners chosen from the county at large or from districts larger than townships.

THE BEGINNINGS OF COUNTY GOVERNMENT IN IOWA

After the admission of Missouri into the Union in 1821 the territory which now constitutes the present State of Iowa was left in an unorganized condition until 1834 when it was made a part of the Territory of Michigan. It was during this period that permanent settlement of Iowa began. The Black Hawk Purchase, ceded by the Sac and Fox Indians in a treaty dated September 21, 1832, was the first land acquired for the purposes of settlement in Iowa.⁹

This land, although as yet unsurveyed, was thrown open

⁹ Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, p. 45; Garver's *History of the Establishment of Counties in Iowa* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. VI, p. 379.

for settlement on June 1, 1833. Settlers had not waited for the legal opening of the Purchase, however. Small scale mining operations had been carried on in and around Dubuque since about 1800 although the Federal government occasionally employed a military force for the purpose of keeping out intruders at Dubuque. After the troops had been withdrawn to take part in the Black Hawk War in 1832 miners and settlers returned in large numbers and the number of settlers increased rapidly after June 1, 1833. There was no local government in the region even after the land was thrown open to settlement so that miners and settlers alike were thrown upon their own devices for self protection. In spite of the general good character of the settlers some violence occurred and on Christmas eve, 1833, a murder took place at Dubuque. The law-abiding citizens of the region petitioned Congress for the extension of the laws of the United States over the district and by an act of Congress approved on June 28, 1834, the territory including the present State of Iowa was attached to the Territory of Michigan for purposes of temporary government. The act declared the inhabitants of the Iowa country to "be entitled to the same privileges and immunities, and be subject to the same laws, rules, and regulations, in all respects, as the other citizens of Michigan Territory."¹⁰ And the first local institutions of a legal character were established in Iowa during this "Michigan period" of Iowa's territorial history.

The supervisor system of local government was in operation in the Territory of Michigan at this time. The chief county authority was a board of township supervisors, varying in number, but including one from each township. There were also about eight other county officials and about ten township officers. A majority of the supervisors was

¹⁰ *United States Statutes at Large*, Vol. IV, p. 701.

necessary for the transaction of county business and each supervisor was definitely representative of a township. There was also a township board in each township composed of the supervisor, the township clerk, and a majority of the justices of the peace, but there was no board of township trustees in the Michigan Territory at this time.

On September 2, 1834, the Governor of the Territory of Michigan in his annual message to the Legislative Council recommended the immediate organization of one or two counties west of the Mississippi River with one or two townships each "similar to the organization of other parts of the Territory". A circuit court and county courts were also recommended.¹¹

The Legislative Council took immediate action and on September 6, 1834, the Governor approved a law entitled "An Act to lay off and organize Counties west of the Mississippi River." This act provided for the establishment of two counties to be known as Dubuque and Demoine; established the boundary lines of the counties named and incidentally of two townships also which were coterminous with the respective counties; and provided for the organization of these local areas. Dubuque County was to constitute a township to be called Julien and Demoine County a township to be called Flint Hill. A county court was authorized for each county but the number of judges comprising the court was not definitely specified.¹²

The act provided for the election of township officers in each of the townships and declared all the laws in force in the county of Iowa (then a county in Michigan Territory, now a part of Wisconsin) extended to and in force in the counties of Dubuque and Demoine.

¹¹ Extract from Governor Mason's message, reprinted in Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. III, p. 265.

¹² *Laws of the Territory of Michigan*, Vol. III, p. 1326.

The act itself was to take effect on and after October 1, 1834. County officers, appointed by the Governor, would take office and the laws of Iowa County would go into effect therefore on the same date. Township officers could not assume office until after their election to be held on the first Monday in November, 1834. The act of September 6th contained only the merest skeleton of local government.

The laws thus extended to the Iowa country would require a full complement of local officers for their execution if many of them were found to be applicable. In this new community conditions were simple and we find a comparatively small number of local officers provided for the counties of Dubuque and Demoine, which indicates that the inhabitants realized that this sparsely settled community did not need all of the political machinery which had been found serviceable in Michigan proper.

On the same day upon which he approved the act to create Dubuque and Demoine counties the Governor of the Territory of Michigan, with the consent of the Legislative Council, appointed the following officers for Dubuque County: one chief justice, two associate justices, a county clerk, a sheriff, a judge of probate, a register of probate, a notary public, a supreme court commissioner, and six justices of the peace.¹³

Since the act of September 6, 1834, was not to go into effect until the first day of October, there was plenty of time for this list of appointments to reach Dubuque so that the new officials could enter upon their duties by the latter date, and the records show that, with one or two exceptions, the appointees assumed office. Demoine County was organized in much the same way as Dubuque but it was not until December 26, 1834, that the Governor, with the consent of the

¹³ Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. III, p. 266.

Legislative Council, appointed a full quota of county officers. In 1834 and 1835 Dubuque and Demoine counties together with Iowa and Crawford counties east of the Mississippi River, in what is now Wisconsin, comprised one judicial district of Michigan Territory.¹⁴

An interesting feature of the local government established in the Iowa country in 1834 was the fact that the county and the township were coextensive in area. It is obvious therefore that a county board made up of one supervisor from each township, the system in force in Michigan Territory, was not adaptable to new counties like Dubuque and Demoine each of which contained only one township. It was necessary therefore to set up some compromise system in these counties and the records show that in both Dubuque and Demoine counties a county board of three supervisors was actually established as the chief county authority.¹⁵

Scarcely had the local government machinery established in the Iowa country under the Territory of Michigan begun to function when the Territory of Wisconsin including the Iowa country was separated from Michigan and given a territorial status of its own. The organic act creating the Territory of Wisconsin outlined the government of the Territory proper and touched upon local government. In general it granted to the inhabitants of the new Territory all of the rights, privileges, and immunities formerly granted to the inhabitants of the Territory of Michigan and extended the laws of the latter Territory over the new jurisdiction, subject to the alterations which might be made by the Governor and Legislative Assembly of Wisconsin.¹⁶

¹⁴ Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. III, pp. 267, 268.

¹⁵ Aurner's *History of Township Government in Iowa*, Ch. I.

¹⁶ *United States Statutes at Large*, Vol. V, p. 10.

One important provision relating to local government in the organic act declared that all township officers and all county officers except judicial officers, justices of the peace, sheriffs, and clerks should be elected by the people. Non-elective county officers were made appointive by the Governor with the consent of the Legislative Council. The Governor and Legislative Assembly were given authority to provide and control elections.¹⁷

A very important general act amendatory to the local government statutes in force was approved on December 6, 1836. It declared that every organized county, or county which might be organized in the future, should constitute one township for practically every purpose of local government. It furthermore provided for the election annually of three supervisors in each county who were to perform, in addition to the duties assigned to them as a county board, the duties which heretofore had been performed by the township board. This means the creation of a county board with both county and township functions.¹⁸

Another important change in county government in the Wisconsin Territory was made by an act of December 20, 1837, which created a board of three county commissioners, to be elected by the people, to serve as the chief county authority. This board replaced the former county board of supervisors and assumed all of its powers and duties. This new system was not put into operation until March, 1838, and the Territory of Iowa came into existence on July 4, 1838, which left only a few months for the commissioner system to be in operation in Iowa during the Wisconsin period.¹⁹

¹⁷ *Organic Act of the Territory of Wisconsin*, Sec. 7, in *United States Statutes at Large*, Vol. V, Ch. LIV.

¹⁸ *Laws of the Territory of Wisconsin*, 1836-1838, p. 64.

¹⁹ *Laws of the Territory of Wisconsin*, 1836-1838, p. 138.

As a matter of fact, county government in Iowa during the Wisconsin period was complicated and confused by the changing systems. From July 4, 1836, to the first Monday in March, 1838, a compromise supervisor system of county government obtained. During this period local government in Iowa differed little from that of the Michigan period. A board of supervisors was the chief county authority, and township government and organization was very simple. From the first Monday in March, 1838, to July 4, 1838, a board of three elective county commissioners made up the chief county authority, but by the time the Iowa counties had reorganized their governments in accordance with the new system the Iowa country was separated from Wisconsin and established as a separate Territory.

The following list attempts to give the chief county authorities and officials during the Wisconsin period — 1836–1838.

County Boards.—Board of Township Supervisors, July 4, 1836, to December 6, 1836; Board of Three County Supervisors, December 6, 1836, to March, 1838; Board of Three County Commissioners, March, 1838, to July 4, 1838.

Elective County Officers.—Treasurer, Coroner, Register of Deeds, and Assessor.

Appointive County Officers.—Sheriff, Judge of Probate, Supreme Court Commissioner, Notaries Public, Justices of the Peace, Auctioneers, Public Administrators, Clerk of County Commissioners, Commissioner of Bail, Master of Chancery, Commissioners to Sell Real Estate, and Agents to Make Contracts.

District Officials.—District Judge, District Attorney, Clerk of District Court, and District Surveyor.

The appointive officers mentioned above, with the exception of the clerk of the county commissioners, the commissioners to sell land, and the agents to make contracts, who

were appointed by the county board of commissioners, were appointed by the Governor. The offices of assessor, public administrator, and clerk of county commissioners were created later. The last four appointive officers in the list were of minor importance. The district officials mentioned were practically county officers. All of them were appointed by the Governor except the clerk of the district court, who was chosen by the court itself.

THE ESTABLISHMENT OF COUNTIES IN IOWA

Since the promulgation of the famous Ordinance of 1787 counties have been established in two ways: under the provisions of the Ordinance of 1787 the Governor of the Territory was authorized to lay out counties and townships in those parts of the district to which the Indian titles had been extinguished, subject to such alterations as might thereafter be made by the legislative body of the Territory; and counties have been established by enactments of legislative bodies.

The first county established in the Northwest Territory was created by the Governor on July 26, 1788. It was situated in the eastern part of the present State of Ohio and was appropriately named Washington. Other counties were created in the same manner before new Territories were erected. The Governors of the new Territories were empowered to exercise the same powers and to perform the same duties in their respective Territories as were given to the Governor of the original Northwest Territory. The Territory of Michigan was created in 1805 and Governor Lewis Cass exercised the powers vested in his office by creating, through executive proclamation, several new counties. In 1822 Governor Cass altered the boundaries of five old counties and created six new ones by an executive proclamation of September 10, 1822, and with this act the

participation of the Governor in the creation of counties seems to have ceased and the next counties established in the Territory were created in 1826 by an act of the Legislative Council. No counties in Iowa, therefore, were ever established by executive proclamation — all have been created by legislative enactment.²⁰

Reference has been made to the fact that the Iowa country was “for the purpose of temporary government, attached to, and made a part of the Territory of Michigan” in 1834. The Sixth Legislative Council of the Territory of Michigan met in extra session in September, 1834, and the Governor in his message called attention, among other matters, to the needs of the people west of the Mississippi River for local government. The Legislative Council took immediate action and on September 6, 1834, “An Act to lay off and organize Counties west of the Mississippi River” was approved. This act was to go into effect on the first day of October, 1834. It applied only to that part of the Iowa country to which the Indian title had been extinguished, namely the Black Hawk Purchase, ceded by the Sac and Fox Indians on September 21, 1832.

The act divided the district into two sections lying on either side of a line to be drawn due west from the lower end of Rock Island (an island in the Mississippi River) to the Missouri River. That part of the Black Hawk Purchase to the north of the line became Dubuque County and the part lying to the south of the line became Des Moines County.²¹

With the organization of Wisconsin Territory in 1836 the area of the present State of Iowa with its two counties was included in the new jurisdiction. The organic act of the

²⁰ Howard's *Local Constitutional History of the United States*, pp. 413, 414, 435, 436, including also note 4 on p. 413; *Laws of the Territory of Michigan*, Vol. I, p. 330, Vol. II, pp. 295, 714, 744.

²¹ *Laws of the Territory of Michigan*, Vol. III, p. 1326.

original Territory of Wisconsin outlined the government of the Territory but made no definite provision for the creation of counties. It did, however, extend the legislative power of the Territory "to all rightful subjects of legislation" and the establishment of new counties was interpreted as belonging to this category.²² The legislative method of creating new counties was by this time in common use in all the States and Territories of the Northwest and Wisconsin counties were established by this process.

The second important step in the formation of Iowa counties was taken at the first session of the legislature of the Territory of Wisconsin when it passed "An Act dividing the county of Des Moines into several new counties". This act was approved on December 7, 1836, and went into effect immediately. It divided the territory comprised in the original county of Des Moines, together with that of Keokuk's Reservation which had been ceded to the United States in September, 1836, into seven new counties, one of which retained the name of Des Moines and may be looked upon as the continuation of the original county. The six other counties created by this act were Lee, Van Buren, Henry, Louisa, Muscatine, and Cook.²³ Since the United States government survey of these lands had not been completed the boundaries of these counties were only vaguely defined and not one of the counties named received permanent boundaries at this time although five of them were organized within a year. The dividing act itself provided for the holding of the district court in five of the new counties and for the division of the debt of the original county among the new counties.

New lands to the west of the Black Hawk Purchase were ceded to the United States by the Sac and Fox Indians in

²² *United States Statutes at Large*, Vol. II, p. 10.

²³ *Laws of the Territory of Wisconsin, 1836-1838*, p. 76.

1837 and in March, 1838, the original county of Dubuque was subdivided into fourteen new counties including one named Dubuque which legally was a continuation of the original county. Some of these new counties contained large sections of the newly ceded Indian lands. Nine of the new counties were attached to the other five for purposes of government until they should become populous enough to organize for themselves. This means that there were twenty-one counties in Iowa to be organized or reorganized in accordance with the commissioner plan of government which went into effect on March 5, 1838.²⁴

One of the counties established by this act was Fayette, the boundaries of which included most of the territory of the two Dakotas and Minnesota in addition to about a fourth part of the present State of Iowa. Its area was about 140,000 square miles but the county was not organized at this time and its size, of course, was decreased before organization took place. By an act of January 18, 1838, the Legislative Assembly of the Territory of Wisconsin established one new county and blotted out one. No more counties were created in Iowa until 1843 when the Sixth Legislative Assembly of the Territory of Iowa established nine new counties and changed the boundaries of three old ones. These counties were established in the central and south central part of the present State where extensive areas had been ceded to the United States government by the Sac and Fox Indians in 1842. In 1846 twelve additional counties were created out of this cession.²⁵

²⁴ *United States Statutes at Large*, Vol. VII, p. 540; *Laws of the Territory of Wisconsin*, 1836-1838, p. 132.

²⁵ *Laws of the Territory of Wisconsin*, 1836-1838, p. 381. See also Garver's *History of the Establishment of Counties in Iowa* in *THE IOWA JOURNAL OF HISTORY AND POLITICS*, Vol. VI, pp. 389-402; *Revised Statutes of the Territory of Iowa*, 1842-1843, Ch. 34; *United States Statutes at Large*, Vol. VII, p. 596; *Laws of the Territory of Iowa*, 1845-1846, Ch. 82.

Iowa was admitted into the Union as a State on December 28, 1846. At this time there were forty-four established counties covering a little less than one-half of the area of the present State. By treaties entered into between the government of the United States and the Pottawattamie and Winnebago Indians in 1846 all the lands of these Indians in Iowa were ceded to the United States, and in 1851 the various tribes of the Sioux nation ceded all their claims to lands in Iowa. The General Assembly of Iowa followed these cessions by the creation of new counties out of a part of the land ceded. In 1847 the counties of Allamakee and Winneshiek were erected out of the Winnebago land in the extreme northeastern part of the State and the counties of Ringgold, Fremont, Page, Taylor, and Pottawattamie were established out of a part of the Pottawattamie cession in the southwestern part of the State.²⁶

On January 15, 1851, the Governor approved an act of the General Assembly which defined the boundaries of and established fifty counties covering the northwestern half of the State.²⁷ It may be noted that this act completed the subdivision of the State of Iowa into counties. This act was passed by the same General Assembly which ratified the county judge system of county organization which is significant only because so many of these newly created counties were to be organized under this centralized form of county government.

The first Constitution of the State of Iowa specified that no new county should be created and that no old county should be reduced to an area of less than four hundred and thirty-two square miles. The Constitution of 1857 included

²⁶ Garver's *History of the Establishment of Counties in Iowa* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. VI, pp. 407-416; *United States Statutes at Large*, Vol. IX, pp. 117, 853, 878; *Laws of Iowa, 1846-1847*, Chs. 66, 83, 84.

²⁷ *Laws of Iowa, 1850-1851*, Ch. 9.

the same provision, but legalized the counties already established along the northern border of the State which were found to be somewhat less in area than the minimum requirement of four hundred and thirty-two square miles. It specified also that "no law changing the boundary lines of any county shall have effect until upon being submitted to the people of the counties affected by the change, at a general election, it shall be approved by a majority of the votes in each county, cast for and against it."²⁸

The division of the State into counties was practically completed by the act of January 15, 1851. Since February 26, 1857, there have been ninety-nine counties in the State of Iowa, no new ones having been created since the adoption of the new Constitution in 1857, though the General Assembly passed several acts looking toward that end.²⁹ There has been more or less legislation concerned with the names of counties and the alteration and adjustment of boundaries. The General Assembly by one enactment divided the county of Kossuth and erected the county of Crocker, but the act was held by the Supreme Court to be unconstitutional. Acts proposing the division of Pottawattamie County have also been passed, but have been defeated by the voters of that county.³⁰

No attempt has been made in this connection to do more than show how counties have been established and to indicate the legislation which actually created new counties. Much legislation has been enacted for the purpose of changing county boundaries or county names and for the correction of errors. The whole number of counties estab-

²⁸ Constitution of Iowa, 1857, Art. II, Sec. 30, Art. XI, Sec. 2.

²⁹ *Laws of Iowa*, 1856-1857, Ch. 147, 1864, Ch. 95, 1870, Ch. 192, 1874 (Private, Local, and Temporary), Ch. 23, 1876, Ch. 160.

³⁰ Garver's *History of the Establishment of Counties in Iowa* in *THE IOWA JOURNAL OF HISTORY AND POLITICS*, Vol. VI, pp. 423-435.

lished in Iowa was one hundred and five. Of this number two were established by the Territory of Michigan, twenty by the Territory of Wisconsin, twenty-three during the period of the Territory of Iowa, and sixty during the period of the State of Iowa. Six counties were blotted out after they were established by having their territories given to other counties. In attempting to make the number of counties in Iowa an even hundred the General Assembly has at different times established an additional county subject however to ratification by the voters of the counties concerned. In each the proposition was defeated and the one hundredth county has not been established.

THE ORGANIZATION OF COUNTIES IN IOWA

All of the ninety-nine counties of the State of Iowa are now organized and have been since the last one — Osceola — was fully organized in 1871. The election of officers and the establishment of the regular machinery of county government within the boundaries of an established county is usually regarded as constituting its organization. It was customary, however, during the earlier period of the State for the legislative body to make some such declaration as the following: "that the county of ——— be, and it is hereby organized from and after the first day of March next, and the inhabitants thereof shall be entitled to all the rights and privileges to which by law the inhabitants of other counties of this State are entitled."³¹ Notwithstanding this declaration, the county was not a functioning organization until it had officers properly selected and qualified.

The first enactments providing for the establishment of counties provided also for their organization. The act of the Legislative Council of the Territory of Michigan which

³¹ *Laws of Iowa*, 1852-1853, Ch. 11.

established the original counties of Dubuque and Demoiné, for instance, was entitled "An Act to lay off and organize Counties west of the Mississippi River."³²

This act not only established the boundaries of the counties but it established a county court in each, established in each county a township, the boundaries of which were coterminous with those of the county, set a date for the first election of local officers, and specified the polling places and designated the temporary county seat for one county and authorized the judges of the county court of the other county to determine its county seat.

Many of the older counties, especially during the period of the Territory of Iowa, were organized by special acts of the legislature. Organization by special legislative enactment continued also during the early State period up to the adoption of the Constitution of 1857.

The special organizing act usually declared that the county was organized from some date fixed by the act itself and that the people of the county were thereafter entitled to all the rights and privileges of the inhabitants of the other organized counties. A date was set for the election of county officers and three commissioners were almost always named in the act to determine the location for the county seat. A date was set when they were to meet and proceed to act. Such commissioners were usually selected from counties adjoining the county to be organized. They were required to subscribe to an oath to the effect that they were not interested in the location, that they were not in any way influenced by any favor or hope of future advantage, and that the only consideration should be the best interests of the new county. It was required that the oaths be properly certified and filed in the records of the county.³³

³² *Laws of the Territory of Michigan*, Vol. III, p. 1326.

³³ See for example *Laws of the Territory of Iowa*, 1845-1846, Ch. 101.

In 1847 the First General Assembly of the State of Iowa passed an act entitled "An Act for the organization of Pottawattamie and other counties".³⁴ This statute provided the first general method for the organization of counties in Iowa. According to its provisions Pottawattamie County was to be organized at any time "when in the opinion of the judge of the fourth judicial district, the public good may require such organization." This judge was also to appoint an organizing sheriff and to fix the date for the holding of an election of officers. Any other established but unorganized county was permitted to be organized whenever the judge of the judicial district in which the county was situated saw fit to appoint an organizing sheriff and fix a date for the election of county officers. Special organization acts applicable only to one county were, however, passed by various General Assemblies after this statute went into effect.

In 1853, the Fourth General Assembly of Iowa, in an act entitled "An Act in relation to New Counties", attached all of the unorganized counties of the State to the organized counties and provided a more definite procedure to be followed in the organization of counties.³⁵ According to this law organization depended to some extent upon the wishes of the inhabitants of the unorganized county. The citizens of such a county were authorized to petition for county organization. The petition which was required to bear the signatures of a majority of the legal voters of the county was to be presented to the county judge of the county to which the unorganized county was attached and upon receipt of such a petition properly certified the county judge was authorized to order an election for county officers in the unorganized county.

³⁴ *Laws of Iowa*, 1847, Ch. 84.

³⁵ *Laws of Iowa*, 1852-1853, Ch. 12.

After this law became effective very few special organizing acts were passed, although some counties were organized in this manner. No minimum number of inhabitants was specified in order for an established county to become organized and this omission tended to permit abuses in connection with the organization of new and sparsely inhabited counties. About half of the counties of the State were organized during the period from 1851 to 1861 when the county judge system of county government was in operation, one man determining to a large extent the welfare of the county. It is recorded for instance that the petition from Dickinson County to the County Judge of Woodbury County, which the law specified should contain the names of a majority of the legal voters, contained the names of only twenty voters yet the election of county officers was ordered.³⁶

After the Constitution of 1857 was adopted there remained but few counties to be organized and they were all organized in accordance with the provisions of the act passed in 1853. Lyon and Osceola in the extreme north-western part of the State were the last two counties to be organized. County officers were elected in these jurisdictions in 1871.

There are four stages or periods in the development of county government in Iowa, each characterized by a distinct type of county governmental organization. The first stage extends over the entire territorial period of Iowa and down to 1851. During these years the county commissioner system of local government was in force. The second period which extends from 1851 to 1860 was characterized by a unique experiment in county government — the so-

³⁶ Smith's *A History of Dickinson County, Iowa* (1902), p. 169. See in addition the *History of the Counties of Woodbury and Plymouth, Iowa* (1890-1891), p. 80.

called county judge system. During the third period, from 1860 to 1870, county government in Iowa was patterned after the New York plan, the characteristic feature of which was the county board of township supervisors. The fourth and final period began with the establishment in 1870 of the present system which is in fact a return to the old commissioner system although the commissioners are called supervisors.

THE COUNTY COMMISSIONER SYSTEM 1838-1851

The Territory of Iowa was carved from that of Wisconsin by an act of Congress approved on June 12, 1838, and the new jurisdiction began its independent career on July 4th of the same year. The laws of the Territory of Wisconsin, in so far as they were not incompatible with the provisions of the act itself, were extended over the new jurisdiction subject, however, to alteration or repeal by the Legislative Assembly of the Territory of Iowa.³⁷

The organic act provided also that all the local executives and judicial officers in office within the limits of the new Territory on July 3rd, when it ceased to be a part of the Territory of Wisconsin, should continue to exercise and perform the duties of their respective offices as officials of the Territory of Iowa until their successors should be duly chosen.

With the laws of the Territory of Wisconsin extended over the new jurisdiction and the executive and judicial officers continuing in office, it is easy to see that the continuity of local government was not broken by the creation of the Territory of Iowa. Until after the first election, the government of the counties was just what it had been since the first Monday of March, 1838, that is, it was carried on

³⁷ *Organic Act of the Territory of Iowa in United States Statutes at Large*, Vol. V, p. 235.

by a board of three county commissioners, four elective, and many more appointive officers, with a full complement of courts and judicial officials. Township government was practically merged with that of the county, there being but one township in each county and very few township officers. There were twenty-one established counties within the area of the Territory of Iowa at the time of the creation of the Territory but some of these counties were not yet organized.

Although there was no break in the continuity of the system of local government in the Territory of Iowa the Legislative Assembly passed two important acts dealing with the general organization of the boards of county commissioners. The first general act to be approved by the Governor was an elaborate law providing for a complete reorganization of the system of county government.³⁸ By the terms of the new statute a board of three county commissioners was continued as the chief county authority. They were to be elected at large by the qualified voters of the county for a term of three years but were to rotate in office so that one commissioner would be chosen annually. Only qualified electors were eligible to the office. The members were required to take an oath of office and were paid on a *per diem* basis. Four regular meetings were to be held each year and each session might continue six days if the business of the county required it. Extra meetings were limited in length to three days. Two commissioners constituted a quorum. The board appointed its own clerk, but the sheriff or his deputy was required to attend the meetings of the board and to execute their orders. Neglect of duty on the part of a commissioner constituted a finable offense.

This board of county commissioners was given extensive powers and duties. It represented the county as a corpora-

³⁸ *Laws of the Territory of Iowa, 1838-1839*, pp. 101-106.

tion and was the agent of the county for the transaction of county business. The board was required to appoint its clerk, to receive and inspect the assessor's books, to levy a county tax according to the law, to cause the clerk of the board to make out a duplicate for collections, to have and use the common seal, to make annually a fair and accurate statement of their receipts and expenditures for the year preceding and to publish the same, to provide books and stationery for the use of the register of deeds, the clerk of the district court, the probate court, the county treasurer, and for themselves, and, in counties having no courthouse, to provide suitable rooms for the holding of the district court.

Other duties were added, and other powers were conferred upon the county commissioners from time to time by statutes dealing directly with different subjects. In an amendatory act of 1842 some minor changes were made in the law relative to the county commissioners. The most important of these required the commissioners' clerk to give bond and to be more detailed and exact in the annual financial report.³⁹ By an act of 1843 the county commissioners were declared to be a body politic and corporate with power to sue and be sued.

Their powers were enumerated as follows:

First. To provide for the erecting and repairing of court houses, jails and other necessary public buildings for the use of the county.

Second. To lay out, discontinue or alter county roads, highways or other ways, and to do all other necessary acts relating thereto.

Third. To license ferries and fix the rates of ferriage, and to grant licenses to innholders, retailers of spirits, and other liquors, and common victuallers, and to do all other acts relating to licensing houses which are or may be provided in the laws regulating licenses, except in the limits of such incorporated cities or towns as by law have or may have the power of regulating licenses.

³⁹ *Laws of the Territory of Iowa*, 1841-1842, Ch. 38.

Fourth. To fix the amount of taxes to be assessed according to the provisions of the revenue law, and cause the same to be levied and collected.

Fifth. To examine, allow and settle all accounts, of the receipts and expenditures of the money of the county.

Sixth. To have the care of the county property, and the management of the county funds and business, except in cases otherwise provided for; and they shall have no other powers except such as are or may be given by law.⁴⁰

The Territory of Iowa was admitted into the Union as a State on December 28, 1846, and the Constitution of 1846 took the place of the Organic Act of the Territory as the fundamental law. This first Constitution contained comparatively few references to the subject of local government. It did provide that all the laws in force in the Territory at the time of the adoption of the Constitution which were not repugnant to it should continue in force until they expired by their own limitations, or were altered or repealed by the General Assembly of the State. It provided, also, that all officers of the Territory, both civil and military, should continue to hold their respective offices until superseded by duly qualified successors. Moreover, there was no general reorganization of the system of local government between the years 1846 and 1851, although a law of 1847 required all counties to be divided into commissioner districts for the selection of members of the county board. A general election law was enacted by the same General Assembly.⁴¹

At the beginning of this period each county comprised one township. County government apparently answered all the actual needs of the people for local government and there was a good deal of feeling that it would be wiser to

⁴⁰ *Revised Statutes of the Territory of Iowa*, 1842-1843, Ch. 31.

⁴¹ Constitution of Iowa, 1846; *Laws of Iowa*, 1846-1847, Chs. 72, 77, 109.

perfect that system before developing township government in addition. The township was therefore relatively unimportant. It was, however, to receive a good deal of attention during the period. In his first message to the first session of the Legislative Assembly of the Territory of Iowa, Governor Robert Lucas recommended the enactment of a law providing for township organization, but there was no response on the part of the legislature. The recommendation was repeated in a message to the Second Assembly and in 1840 a law was passed which empowered the county commissioners to authorize an election in each county on the question of adopting township organization.⁴² The law contemplated the division of the county into several townships and the election of a full quota of township officers at the annual township meetings. The Third Legislative Assembly authorized the county commissioners to divide counties into townships upon their own initiative. There was practically no response to this law and the Legislative Assembly at its next session passed a more elaborate statute including a description of the procedure necessary to the establishment of townships as well as provision for an annual township meeting of electors for the purpose of choosing the following township officers: a clerk, three trustees, two overseers of the poor, three fence viewers, two constables, one township treasurer, and a sufficient number of supervisors of highways. Justices of the peace were still regarded as purely county officers. All three of these statutes were optional and the division of counties into townships proceeded very slowly. In the absence of townships, counties were generally divided into precincts for election and judicial purposes. In 1847 the General Assembly of the State of Iowa enacted a mandatory statute

⁴² Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. I, pp. 77, 99; *Laws of the Territory of Iowa, 1839-1840*, Ch. 37.

compelling county commissioners to establish townships.⁴³ It may be said, therefore, that near the close of the period township government was definitely established, whereas at first there was practically none. The development of township government was very gradual and was not strongly demanded by the people. The trustee system was the type of township government finally adopted and the township meeting, except for election purposes, never played an important part in the State of Iowa.

The list of county officers in existence when the Territory of Iowa was organized on July 4, 1838, has been given. The Organic Act provided that the local officials in office at that time should continue to serve until the next election. Only four of these — the treasurer, the coroner, the recorder, and the assessor — in addition to the county commissioners were elective. The law declared, however, “that all county officers except judicial officers, justices of the peace, sheriffs, and clerks of the courts shall be elected by the people, in such manner as is now prescribed by the laws of the Territory of Wisconsin, or as may, after the first election, be provided by the Governor and Legislative Assembly of Iowa Territory.”⁴⁴ Presumably this added to the list of elective county officers but it is impossible to show what additions were made. In March, 1839, Congress amended the Organic Act so as to authorize the Legislative Assembly to provide by law for the election or appointment of sheriffs, judges of probate, and justices of the peace as it should see fit.⁴⁵

The first general election held in the Territory of Iowa,

⁴³ *Laws of the Territory of Iowa*, 1840-1841, Ch. 82, 1841-1842, Ch. 118; *Laws of Iowa*, 1846-1847, Ch. 11.

⁴⁴ *Organic Act of the Territory of Iowa*, Sec. 7, in *United States Statutes at Large*, Vol. V, p. 235.

⁴⁵ *United States Statutes at Large*, Vol. V, p. 357.

in accordance with the acts of its Legislative Assembly, was on the first Monday in August, 1839, when the following officers were elected:⁴⁶ three county commissioners, a treasurer, a coroner, an assessor, a public administrator, a surveyor, and constables. Possibly auctioneers and supreme court reporters were chosen by the electors. The clerk of the county commissioners, the judge of probate, the district prosecutor, the justices of the peace, and the sheriff were appointive officers at this time.

Further changes were made in the election laws in 1839 and in 1840 and at the next general election, which was held on the first Monday in August, the following officers were elected by the people:⁴⁷ county commissioners — at least one — treasurer, coroner, assessor, public administrator, judge of probate, sheriff, recorder, constable, and justices of the peace in townships. The following officers were not elected at this particular election: clerks of the district court, district prosecutors or attorneys, clerks of the county commissioners, surveyors, auctioneers, and notaries.

At the beginning of the period only four county officials were elected: the rest were appointed — some by the Governor, some by the district court, and some by the county commissioners. The tendency away from appointment toward election was so strong that at the close of the period all county officers were elected by the people. The same could be said of township officers. At the beginning of the period county elections were annual. At the close the regular county elections were biennial, all officers except county commissioners having two-year terms. Township elections continued to be held annually even to the close of the period. County elections were by ballot and were held on the first

⁴⁶ *Laws of the Territory of Iowa, 1838-1839*, pp. 71, 385, 450.

⁴⁷ *Laws of the Territory of Iowa, 1838-1839*, p. 71, 1839-1840, Chs. 45, 56, 1840 (Extra Session), Ch. 29.

Monday in August in the odd-numbered years. Township elections were conducted *viva voce* at the annual township meeting held on the first Monday in April.

Several other changes took place in the county offices during the period. Some in existence at the beginning were dropped out; some new ones were added. On the whole the number was decreased. The commissioner of bail, the master of chancery, the register of probate, and the supreme court commissioner soon disappeared. Later the public administrator and the auctioneer ceased to be chosen. The office of collector, a new position established in 1843, was abolished in 1847.⁴⁸ Toward the close of the period consolidation of four or five offices occurred: the sheriff becoming *ex officio* assessor, and the recorder *ex officio* treasurer with the duties of the former collector.

The only new offices created during the period and still in existence at its close were those of the school fund commissioner and sealer of weights and measures. Justices of the peace and constables, at first appointed or elected in counties, came to be elected in the townships of organized counties and in the precincts of counties not yet organized. That is, they came to be more and more township and less and less county officers.

At the beginning of the county commissioner system of local government in Iowa — or about 1837 or 1838 — nearly all of the functions of local government were exercised by the county officials. The administration of justice, however, was largely a matter of district concern; while the township was supposed to share, on paper at least, in the control of elections and in the care of roads.

From 1840 onward as laws were passed authorizing the division of counties into townships and outlining the organ-

⁴⁸ *Laws of Iowa*, 1846-1847, Ch. 99, Sec. 36, Ch. 100, 1848 (Extra Session), Ch. 21, 1848-1849, Ch. 24.

ization of township government more and more functions were given to the township officials to perform. The assessment and equalization of taxes, pure county functions in 1838, were shared with the townships from 1843 to 1846. After 1840 townships were authorized to levy and collect a tax for the poor and thus came to share with the county the two important functions of the levy and collection of taxes. Beginning with the laws of 1840, also, the township acquired functions relative to the administration of schools and care of the poor which it continued to share with the county down to the close of the period. In regard to township functions during the time under discussion it should not be forgotten that the counties were slow in adopting township government; that the system was not established in all counties before 1847 or 1848, and that therefore what has been said about the township sharing certain functions with the county would be true only of those counties having township government.

At the close of the period the exercise of the functions of local government may be summed up as follows. The township shared with the county in the care of the poor, the care of roads, the administration of schools, the control of elections, the administration of justice, and to a lesser degree in the levy and collection of taxes. The township alone exercised the minor function of viewing fences. On the other hand, the county not only shared with the township in the care of the poor and of roads, in the administration of schools, elections, and justice, and in the levy and collection of taxes, but exercised exclusively the functions of assessment of property, equalization of assessments, probate of wills, administration of estates, recording of land titles, care of county property, issuing of licenses, the survey of lands, the offering of bounties, the holding of inquests over dead bodies, and the care of the insane.

THE COUNTY JUDGE SYSTEM 1851-1860

The year 1851 is a landmark in the history of county government in the State of Iowa. It marks the close of the county commissioner system and the inauguration of the county judge system. The new system, outlined in the *Code of 1851*, was radically different from the old one and the change was revolutionary in its abruptness.

The chief feature of the proposed system of county government was the county judge who was to be an elected official vested with the usual powers of the county commissioners and judge of probate. He was the accounting officer and the general agent of the county, in fact the chief county authority. The clerk of the district court was to be ex officio clerk of the county court and the recorder was to continue as treasurer and collector. All county officers were to receive salaries, the amount of which was to be dependent upon the population of the respective counties and the fees collected by county officers were to be paid into the county treasury. The office of the county commissioners was to be abolished as were also those of the school fund commissioners, the probate judge, and the clerk of the board of county commissioners. The other county officers were to remain as they had been before.

It is not clear why the Code Commission proposed such a radical change in county government nor can the origin of the proposed system be determined definitely. The most likely explanation seems to be that the commission deliberately merged the county commissioners and the probate judge into one office on the ground that more efficiency and economy might be secured. However that may be, there was a contest when it came to the adoption of the proposed scheme by the General Assembly. There were three main arguments advanced in favor of the county judge system: it would make for economy; it would be efficient; and the

whole Code would be deranged if any part of it was not adopted or was radically altered. The proposed plan looked toward further centralization of authority and to the simplification of governmental machinery. The opponents of the change in county government maintained that the county commissioner system was functioning efficiently and smoothly and that the proposed plan was undemocratic and unrepblican, dangerous from the standpoint of corruption, and impractical. The contest was carried on very actively in the press of the State as well as in the General Assembly. There seems to have been no widespread demand for a change and it is doubtful if the people of the State understood a great deal about either the proposed county judge system or the Code, but on the last day of the legislative session the Code, including the county judge system of county government, was adopted.

The county commissioner system may not have worked perfectly in Iowa from 1837 to 1851. The problems of county government in a new State are especially difficult of solution, but it is doubtful if any other plan would have been more successful under the circumstances. The situation indicates that the new plan of county organization was not adopted on its merits but that it was carried through the legislature on the argument that its rejection would derange the Code as a whole.

Under the new plan of county organization the county itself retained its previous political and legal status, but the government was placed in the hands of nine officers.

In this scheme the county judge was the chief county authority.⁴⁹ He was to be elected by the qualified voters of the county for a term of four years and was "invested with the usual powers and with the jurisdiction of county commissioners and of a judge of probate" in addition to many

⁴⁹ See *Code of 1851*, Secs. 103-140.

other powers specifically conferred by statute. To enumerate the powers and duties of the county judge would require much space and would not help greatly to a better understanding of the office. In general, however, it may be said that the county judge was the chief executive, administrative, legislative, and judicial authority in the county government. He was the manager of all county business and had the care and custody of all county property. He could determine the amount of taxes to be levied, issue all county warrants, and certify to transcripts of the records of his office. He had also supervisory authority over the financial functions of the other county officers and he was authorized, but not compelled, to submit certain questions to a vote of the people. His power to determine the amount of taxes to be levied annually may be classed as the exercise of legislative authority. The judicial powers of the county court, or of the county judge, were largely those of a judge of probate. He had jurisdiction in the probate of wills, in the administration of estates of deceased persons, and in the guardianship of minors and authority to hear a great variety of cases of other sorts.

It will be noted that these powers were very extensive. The Code, however, did not provide limitations and safeguards adequate to secure responsibility. The county judge was not even required to execute a bond. It is true that the county judge, together with the other county officers, was removable from office for habitual or wilful neglect of duty, gross partiality, oppression, extortion, corruption, wilful maladministration in office, and upon conviction of a felony. But to secure a removal it was necessary for some one other than the county judge to take the initiative and the ordinary citizen, although he will criticize volubly, hesitates to take action and only one county judge was actually removed from office during the existence of

the system in Iowa. The county judge was, of course, responsible to his constituents at the close of his term of office in case he sought reëlection but such a check was inadequate to safeguard the system from abuse.

Aside from the judge, the county officers provided for under the county judge system were a prosecuting attorney, a clerk of the district court who was also *ex officio* clerk of the county court, a recorder who was also *ex officio* treasurer and collector, a sheriff who was also *ex officio* assessor, a surveyor, a coroner, a surveyor of roads, and a school fund commissioner. The duties of the county officers with the exceptions indicated in the enumeration were those usually belonging to such offices. The county judge, the clerk, and the treasurer constituted a board for the equalization of assessments.⁵⁰

All of these officials were elected by popular vote for a term of two years. No age, residence, or other qualifications were required of candidates for county offices, but after election to office the successful candidate was required to take an oath of office and to execute a bond. It has been noted that the county judge was not required to give bond. The county officers were individually responsible to the electorate and all could be removed from office for the causes already enumerated.

The county judge system was organized in such a manner as to make possible but not guarantee effective administration of county affairs. In a way it was imposed upon the people of the State and it never did succeed in gaining popular confidence. Since the county judge system placed so much power in the hands of one man and did not adequately safeguard the interests of the people it had possibilities both for good and for evil. Ex-Governor C. C. Carpenter summed up the case for the system well when

⁵⁰ *Code of 1851*, Chs. 16, 17, 18, 19, 20, 21, 68.

he said: "When a county had the good fortune to elect a judge of high integrity, and good judgment and manly courage, it was a fine system of government; just as an absolute monarch, possessing all the best qualifications of manhood makes the best government for his people. These, however, are rare cases in this world of selfishness."⁵¹

In counties where able and honest men served as county judges the system was remarkably efficient and economical and served the interests of the people as well, at least, as any system could have done; but able and honest men were not always elected. In the same year that the county judge system was put into effect the General Assembly enacted a law for the purpose of dividing the northwestern part of the State into counties. At least one-half of the counties of the State were established by this one statute and the majority of them were organized during the period in which the county judge system of county government prevailed. This means that the first form of county government in these sparsely settled counties was the county judge system in the operation of which so much depended upon the character of the man chosen to the office of county judge.

In many of these counties adventurers and speculators were interested in the organization. Finances were manipulated and county bonds were issued for warrants issued for contracts let to insiders for bridges, public buildings, and for the draining of swamp lands. Counties were burdened with indebtedness for which they got practically nothing in return.⁵² Abuses of this character were so common that there was a growing demand for a change in the system of county government while the system in force was still in the experimental stage.

⁵¹ Quoted in the *Annals of Iowa* (Third Series), Vol. X, p. 46.

⁵² See editorial entitled *The County Judge System* in *Annals of Iowa* (Third Series), Vol. VI, p. 145.

Several changes were made in the county judge system during the decade of its existence, the most important of which were those placing limitations upon it. In 1853 county judges were required to give bonds in an amount ten times greater than their salaries and the term of office was reduced from four to two years. A closer check was also imposed upon the financial functions of the county judges. Two important extensions were made to the powers of the county judge, however, both of which increased the chances for abuse. In 1853 the State turned over to each county the swamp lands located within it and authorized the counties to sell this land and use the proceeds to build levees, drains, roads, and bridges. The county judge was given jurisdiction over these lands. In 1855 a prohibition act was passed and the county judge was authorized to appoint two county agents with authority to buy and sell intoxicating liquors for medicinal, mechanical, and sacramental purposes. The county judge was also empowered to make rules and regulations for the traffic and to fix the price of the liquors sold. He could draw from the county treasury the money needed to make the first purchase of the liquors.⁵³

Several enactments of the same period dealt with county officers other than the county judge. In 1853 the sheriff lost his *ex officio* functions as assessor, and township assessors were authorized. These township assessors meeting with the county judge were also constituted a board for the equalization of assessments. A new county officer — the drainage commissioner — was provided for in the same year, and in 1858, in connection with a reorganization of the school system of the State, the office of county superin-

⁵³ *Laws of Iowa*, 1852-1853, Chs. 13, 40, 72, 1854-1855, Chs. 45, 109, 1856-1857, Chs. 21, 120, 226, 228, 1860 (Special Acts and Resolutions), Chs. 42, 60, 82, 85, 111.

tendent of schools was created. In 1858, an important general election law which abolished the spring election and reduced the fall elections from two to one was passed.⁵⁴

The county judge system was put into operation in the fall of 1851 and no sooner was the system in full operation than its enemies began to attack it. Weak features were pointed out and changes were demanded. In the Fourth General Assembly, 1852-1853, the criticism was strong enough to bring about certain important alterations in the system. Opponents to the plan waged a fight in every session of the General Assembly and were strong enough to have overthrown the system in 1858 had the legislators been able to agree upon an alternate plan. In 1860 the fight was successful and the county judge system of county government was abolished in favor of the supervisor or New York plan. The system was abolished because of abuses which were permitted to develop and because it never succeeded in securing the confidence of the people of the State.

THE COUNTY BOARD OF TOWNSHIP SUPERVISORS

It has been shown that the county judge system provided a highly centralized scheme for the administration of county affairs and that there was an increasing number of people in the State who were opposed to centralized authority. As a matter of fact the period of the county judge marks the beginning of a long struggle in the State of Iowa between the supporters of centralized administration of local affairs and the advocates of administrative decentralization. Opposition to centralization in general and to the county judge system in particular was very strong as early as the middle of the decade, 1850-1860. It developed stead-

⁵⁴ *Laws of Iowa*, 1852-1853, Chs. 13, 69, 1858, Chs. 36, 52, 81, 102, 139, 158, Sec. 27, 159.

ily and there was no question that a change would be made in the system of county government when the Eighth General Assembly convened in January, 1860; the difficulty was to secure agreement in the legislature upon an alternate plan. One faction favored the retention of the county judge; one advocated a return to the county commissioner system of the earlier period; while a third proposed the adoption of the supervisor plan.

The strong demand for a change and the varied opinions as to what the change should be served to develop one of the most searching inquiries into local government ever carried on by a legislature of the State of Iowa. The final result was an agreement upon the supervisor system which meant that the organization for county government in Iowa was to be shifted from one extreme to the other. A highly centralized, arbitrary, one-man system was to give way to a county board of township supervisors with diffused power. The advocates of decentralization maintained that the decentralized system of township and county organization would be closer to the people, that it would be more democratic, and more in harmony with the spirit of American institutions. It was declared that public officials could be held more strictly accountable for what they did and that all public service would be placed on a more efficient basis. The opponents of the supervisor system argued against the needless multiplicity of offices, the increased expense, and the entire absence of individual responsibility but the advocates of decentralization won and the supervisor system was established.⁵⁵

Under the new plan which went into effect on July 4, 1860, each county continued as a body politic and corporate with the powers and limitations established by law. The governing body of each county was to be composed of one

⁵⁵ See *Revision of 1860*, Secs. 302-326.

member elected from each civil township with a possible additional member from especially populous townships. The term of office was two years and one-half of the supervisors were to be elected every year. It will not be necessary to enumerate in detail the powers and duties of the board of supervisors. It was to exercise all of the functions of the county judge in his administrative capacity; it controlled all county property; it could lay out and organize townships; it had extensive control over the highways and bridges; it managed and controlled the school funds of the county; it was the county authority in the field of finance; and it had executive control over the other county officers. Adequate provisions for securing individual responsibility, however, were lacking in the system. County and township functions were blended into one complex system. The township supervisor had much in common with the township trustees and the township clerk, and was really a township officer. Except for election purposes, however, township meetings were never held and there was no attempt to introduce the New England town meeting type of local government.

The office of county judge was not abolished when the supervisor system was adopted. The county judge was simply relieved of all but his judicial functions and the office itself was not discontinued until the office of county auditor was created in 1868. Other changes in county government during this period — 1860 to 1870 — were few and relatively unimportant.

When the supervisor system went into operation in 1860 there were ninety-six organized counties in Iowa, thirty-five of which had a population of less than 2000. The number of organized townships in each of these counties⁵⁶ varied

⁵⁶ Compiled from Table LXXXII, *Historical and Comparative Census of Iowa, 1836-1880*.

from one to sixteen. The population was increasing rapidly by immigration from other States where the commissioner system of county government prevailed. During the first years of the decade the country was at war, taxes were high, and conditions were unsettled. Probably no system of local government could have given satisfaction under this test and the supervisor system had been established in the face of strong opposition. The plan of government was expensive; the boards were local and partisan; and the entire lack of individual responsibility appeared to encourage waste, delay, expense, and inefficiency. There seems also to have been a prejudice against the system which was never overcome and it was scarcely in operation before there was a demand on the part of considerable numbers of the people of the State for a change.

The arguments for and against the system were substantially the same as those brought forward before its adoption. Friends of the plan maintained that it was more representative in character and that it provided for a more effective control of public finance than was assured under any other system. They demanded that the system be given a fair trial. The enemies of the plan denounced it as expensive, cumbersome, inefficient, and irresponsible. The struggle between the forces favoring administrative centralization on the one hand and those favoring decentralized administration on the other was to continue until a compromise could be reached so at each session of the General Assembly the contest was renewed. The war overshadowed everything else during the first half of the decade and in spite of persistent agitation for a change nothing was done further than to keep the opposition active. Legislative committees investigated and made reports, petitions and memorials were received, but legislative action was not taken.

As time passed dissatisfaction increased, especially in the newer and more sparsely populated counties which were struggling to support a highly decentralized and expensive local administrative system. In 1868 the Twelfth General Assembly considered the whole question. The Senate passed a bill for the reorganization of county government but the House refused to agree. When the Thirteenth General Assembly met in 1870, the question of county government again claimed attention and action was finally taken when a bill providing for the present system was enacted into law.⁵⁷

THE COMMISSIONER SYSTEM

The newspapers of the State had continued to point out the shortcomings of the supervisor plan while at the same time the merits of the commissioner system had been emphasized. The opposition to the supervisor system had kept up the fight until public sentiment was strong enough to result in practical legislation. There was, however, still much difference of opinion among the members of the General Assembly and the legislation enacted was a compromise between the advocates of centralization and those of decentralization. But the system of township representation on the county board was definitely abolished which gave the real victory to the opponents of decentralized administration.

The plan of county organization adopted was in substance the commissioner system. The name "board of supervisors" was retained but township representation was set aside. The law specified that the board of supervisors

⁵⁷ *Journal of the House of Representatives*, 1868, pp. 65, 67, 83, 147, 198, 275, 299, 300, 408, 544, 545; *Journal of the Senate*, 1868, pp. 160, 161, 209, 226, 233, 234, 248, 249; *The Iowa Daily State Register* (Des Moines), November 17, 1869, and February 3, 1870. See also *The Des Moines Bulletin*, 1870, Legislative Supplement, Nos. 20 and 21.

should consist of three members but, at the same time, it authorized each county to determine for itself whether the number of members of its board should be increased to five or seven. The important change was that the county authority was reorganized on a county basis and that the spheres of the township and county in local government were more clearly defined.⁵⁸

The system, which went into effect on January 1, 1871, constitutes the system of county government in Iowa to-day. The law of 1870 did not change the status of the county. It did not even enumerate the powers and duties of the new board of supervisors. It simply regarded the new board as having the same powers and duties as the old board of township supervisors.

It should be noted that the present system differs from the supervisor system which it superseded only in degree. County boards may now have three, five, or seven members. Under the old system some counties had no more than three members on the board. Moreover, the supervisor system in Iowa never was the fully developed New York plan. Townships had representatives on the county board but township meetings except for election purposes were never held. The law of 1870 set aside the old board made up of township officers and set up in its place a purely county body made up of county officers. The idea of representative districts was not, however, thrown completely overboard because the present system permits the board of supervisors itself to divide the county into districts for the selection of the members of the board.

In 1876 no county in the State had increased the number of the members of its board of supervisors, but in 1882 the records show that at least twenty counties had boards of five members and one had seven members. By 1900, about

⁵⁸ The law is to be found in *Laws of Iowa*, 1870, Ch. 148.

forty counties had boards composed of five members and there were four counties in which seven members were elected to the county board of supervisors. At the present time only two counties have seven members on their boards; thirty-seven have five each; and sixty have three. As far as the number of members on the respective county boards of supervisors is concerned a condition of stable equilibrium seems to have been reached.

Under the present system the county board of supervisors consisting of three, five, or seven members elected at large from the county or by districts, as the board itself shall determine, constitutes the chief county authority. The members of the board are elected for three-year terms and they rotate in office so that the board is not ordinarily completely renewed at any one time. The board is, in legal effect, for all financial and ministerial purposes, the county. It has the power to do whatever the county as a political subdivision of the State can do, and unless the matter is exclusively vested in some other officer or person, it is the only agency that can act. The board is a continuing corporate body charged with certain legislative, judicial, and administrative powers and duties. In exercising these very numerous powers and duties the board exerts a power delegated to it by the State for the benefit of all the citizens.

It will be noted then that the authority of the county board is determined by statute. The acts conferring upon or withholding powers and duties from the board are so numerous that no attempt will be made in this connection to review them.

Since the present system went into operation new functions have been committed to the counties, new powers and duties have been given to the board of supervisors, county and township offices have been established and abolished, functions have been shifted from officer to officer and duties

have been changed but the county organization system itself remains practically as it was established in 1870.

A study of Iowa legislation of the past fifty years as it relates to the county, the county board of supervisors, and other county officers indicates that the county in this State has not increased in importance as a unit of local government as compared with cities and towns. The county is coming to be more distinctly an administrative area for the convenient administration of State laws by State rather than by county agents.

From this very brief survey of the historical background of county government several things will have been noted. The first of these is that our institutions of local government are the result of adaptations made to older institutions in order that they might better fit new conditions shaped largely by environment. The English colonists brought with them to America the institutions of local government with which they were familiar. Within the colonies new and different environments tended toward the development of distinctive types of local governmental organization although the original institutions were the same.

After independence had been achieved by the thirteen original States and the boundaries were extended westward a long period of experimentation seemed to indicate that the types of local government developed in the middle colonies, which incorporated features common to both the extremes, were best adapted to the needs of the people who were settling the great agricultural regions of the north central part of the United States.

The Iowa country was influenced first by the government established in the Old Northwest Territory and later by the territorial jurisdictions of Michigan and Wisconsin of which it was successively a part.

When the Territory of Iowa was set up as a separate

jurisdiction it inherited institutions of local government which bore the stamp of all of the earlier jurisdictions of which it had been a part. The political inheritance was increased also by the ideas brought in by the settlers who very naturally sought to establish in the new homes the political institutions with which they had been familiar in the older States. The effect of this on local institutions was decreased, however, because the settlers frequently came from widely separated States or else had found that the institutions with which they were familiar did not suit the needs of the new region. Economic conditions were perhaps as influential as any other factor in forcing an adaptation in political machinery and local needs probably overbalanced political inheritance when the two clashed.

Beginning in 1834 with the establishment of two counties by the Territory of Michigan the territory lying within the bounds of the State of Iowa was divided up into counties by legislative enactments. This division was practically completed within the first ten years of the State period. The first counties were organized by the legislative acts which established them but as boundaries were defined and counties were established in many instances before settlement was made it became the customary practice to organize each county by special legislative enactment. This practice continued throughout the territorial period and to some extent until 1855 but a general procedure to be followed in the organization was provided in 1847 and more fully developed in 1853. The organization of two counties in 1871 completed the establishment of county government in each one of the ninety-nine counties in existence from that time to the present day.

The county has been a very important area of government in Iowa throughout the history of the State — always more important than the township. During the entire terri-

torial period and for five years of the State period of Iowa the commissioner system of county organization obtained and apparently met the needs of a frontier community as well as any system could have been expected to do. An abrupt change to a much more highly centralized and arbitrary system was made in 1851 seemingly because the Code Commissioners believed such a system was theoretically better suited to the needs of the sparsely settled frontier counties of that day than was the commissioner system. The institution of this system developed a strong contest between the advocates of centralized administration of local affairs and the advocates of decentralization. In this contest the latter won temporarily when the supervisor system superseded the county judge plan of 1860. The contest continued, however, until a compromise was reached in a return to the commissioner plan as provided for by law in 1870.

During the period under consideration in this review, several changes of general character and permanent importance have been made in the institutions of local government. Prominent among these changes is one in the manner of choosing local officials, the principle of popular election having triumphed over the principle of appointment in almost every State, and respecting almost every office. Another change has to do with the method of compensation. Early in the nineteenth century, local officers were almost universally paid by means of fees; now definite salaries have been generally substituted. The rapid multiplication of counties throughout the South and West, together with the substitution of a board of commissioners or supervisors as the governing body of the county in place of justices of the peace have been changes of very great importance.

A later development which has affected local government

in all parts of the country except New England has been the organization of large numbers of incorporated towns and villages. The effect of this change has been to differentiate more than ever before between urban local government and rural local government, and to cause a separation of the two. Finally, a tendency which may be observed to-day exists in the gradual development in all of the States of some central administrative supervision over many branches of local government. The general rule for a long time was toward decentralized systems: the tendency at the present time is toward centralized administrative control.

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THE CODE OF 1924

On November 12, 1838, Governor Robert Lucas suggested to the Legislative Assembly of the Territory of Iowa that a committee of not more than three persons be appointed "to digest and prepare a complete code of laws during the recess of the Legislature, and to report them for consideration at the ensuing session." Although this suggestion was not followed, a joint resolution was adopted requesting the judges of the Supreme Court "to furnish this Legislative Assembly, during its present session, with such bills, as will, in their opinion, form a proper code of jurisprudence". This request was complied with and many of the most important laws passed at this first session of the Legislative Assembly were written by Judge Charles Mason, at that time Chief Justice of the Territorial Supreme Court. These laws, although arranged topically and published in an alphabetical order, were in reality nothing more than session laws, but the volume containing them has been looked upon as the first "code" in Iowa and is commonly referred to as *The Old Blue Book*.¹

It is a significant fact that a code of whatever character soon becomes out of date. Additional laws passed by succeeding sessions of the legislature, together with amendments and repeals of the existing laws, renders new compilations necessary. Accordingly in 1842 a joint legislative committee on revision was appointed and the following year a new compilation — *The Blue Book* — was published.²

¹ Clark's *Codification of Statute Law in Iowa* in the *Iowa Applied History Series*, Vol. III, pp. 402, 403.

² Clark's *Codification of Statute Law in Iowa* in the *Iowa Applied History Series*, Vol. III, pp. 403, 404.

The need of a complete revision was, however, apparent by 1847, and a commission consisting of Charles Mason, William G. Woodward, and Stephen Hempstead was appointed "to draft, revise and prepare a code of the laws for the State of Iowa." The result of their work was the *Code of 1851*, the first real code of Iowa. On February 5, 1851, this code was adopted as a whole by both houses of the General Assembly and signed by the Governor.³

The decade from 1850 to 1860 was marked by many legislative changes in Iowa, hence there resulted a need of re-writing the laws. In 1858 a commission was appointed "to conform the laws of the State to the Constitution" and also "to prepare a code of civil and criminal procedure, and revise and codify the laws of the State". In the work of revision the commission followed the arrangement of the *Code of 1851* as to parts, titles, chapters, and sections. The volume which resulted is known as the *Revision of 1860*. This was a compilation of existing laws and not a code in the strict sense of being adopted at a single session of the legislature. Portions of this volume were codifications of existing laws — the Code of Civil Practice and Procedure and the Code of Criminal Practice and Procedure.

The Thirteenth General Assembly in 1870 appointed a commission of three men to prepare another revision. William H. Seevers of Oskaloosa, John C. Polley of Clinton, and William J. Knight of Dubuque were the men appointed on this committee. Mr. Polley, however, removed from the State before the commission was ready to begin work. Accordingly Governor Samuel Merrill appointed William G. Hammond, Chancellor of the Law School of the University of Iowa, to fill the vacancy. The committee reported to the Fourteenth General Assembly, and the following year, after an adjourned legislative session of thirty-six

³ *Code of 1924* (Preface), p. v.

days, the *Code of 1873* was published. This volume remained the official code for a period of twenty-four years, although private compilations known as McClain's Code and Miller's Code were in current use.⁴

Early in the nineties, however, it became apparent that there should be recodification of the statutes of the State. The commission of five members appointed for this purpose was empowered to "change the phraseology and make any and all alterations necessary to improve, systematize, harmonize and make the laws clear and intelligible." The men chosen for this work were Horace S. Winslow of Newton, Horatio F. Dale of Des Moines, John Y. Stone of Glenwood, Charles Baker of Iowa City, and Judge Emlin McClain, Chancellor of the Law School of the State University of Iowa. Ezra C. Ebersole was appointed code editor, and a code supervising committee — made up of two members of the Senate and three members of the House — was appointed to supervise the publication of the work.

The *Code of 1897* was much larger than any of the former codes. The increase in size was due largely to the fact that extensive and valuable annotations, prepared by Judge McClain, were included. This volume was adopted at one session of the legislature — each title being passed as a separate act. Furthermore certain classes of prior laws not included in the code were repealed. Thus it constituted a real code rather than a compilation.⁵

Since 1897 there have been three supplements to the code — the *Supplement of 1902*, the *Supplement of 1907*, and the *Supplement of 1913*. In addition the latter was further augmented by the *Supplemental Supplement of 1915*.⁶

⁴ Clark's *Codification of Statute Law in Iowa* in the *Iowa Applied History Series*, Vol. III, pp. 405-408.

⁵ *Laws of Iowa*, 1894, p. 112; *Code of 1897*, Sec. 49.

⁶ Clark's *Codification of Statute Law in Iowa* in the *Iowa Applied History*

MAKING THE CODE OF 1924

Notwithstanding the publication of code supplements, the volume of legislation since the *Code of 1897* had so increased by the year 1919, that it was difficult to ascertain the exact status of the statute law. Accordingly the Thirty-eighth General Assembly created a Code Commission with authority to compile in a single volume all of the existing statutory laws of the State which were of a general and permanent nature, and to rearrange, revise, and rewrite such parts as were deemed necessary. It was stipulated that this work should be completed by December 1, 1919.

The law further provided that the commission should consist of the Supreme Court Reporter, and two other persons to be selected by the Governor from a list of five persons recommended by the Chief Justice of the Supreme Court. In accordance with this law Chief Justice Scott M. Ladd submitted the names of W. A. Helsell of Odebolt, J. C. Mabry of Albia, E. D. Perry of Des Moines, J. H. Trewin of Cedar Rapids, and Chas. M. Waterman of Davenport. From this list Governor Harding selected J. H. Trewin and J. C. Mabry who, together with U. G. Whitney, Supreme Court Reporter, constituted the members of the Code Commission. Immediately upon appointment, the commission organized with Mr. Trewin as chairman and Mr. Whitney as secretary.

Realizing that without special aid the work could not be completed within the time prescribed, the commission employed Ralph MacLean to assist Mr. Trewin at Cedar Rapids, C. A. Robbins to assist Mr. Mabry at Albia, and O. K. Patton to assist Mr. Whitney at Des Moines. The

Series, Vol. III, pp. 411-413. A more complete history of codification in Iowa prior to the year 1919 is given in a series of articles by Clifford Powell in *THE IOWA JOURNAL OF HISTORY AND POLITICS*, Vols. IX-XII, and *A Review of the Work of the Iowa Code Commission*, by Jacob Van der Zee, in *THE IOWA JOURNAL OF HISTORY AND POLITICS*, Vol. XVIII, pp. 477-533.

commission also obtained the services of John E. Brindley of Ames to aid in compiling and codifying the State tax laws, H. C. Horack of Iowa City to analyze the uniform conditional sales act, and Jacob Van der Zee of Iowa City to prepare the index.⁷

The commissioners interpreted the law as authorizing them to prepare a compilation of the laws of the State, omitting all acts of a local or temporary character, all repealed legislation, and all annotations and court decisions, and to redraft in the form of code revision bills such portions of the existing law as seemed advisable.

The Code Commission in discharge of this duty prepared: (1) the *Compiled Code of 1919*, which consisted of all of the statutory law of a general and permanent nature reclassified and rearranged, but otherwise unaltered; and (2) the *Report of the Code Commission*, which consisted of 253 recommendations in the form of code revision bills. In preparing the *Compiled Code* no actual changes were made in the law. Indeed, it was compiled only as preparatory to the later work of codification, and was not intended for general use.⁸

It should be noted, however, that a new classification of the existing law was adopted. The *Code of 1897* consisted of four parts: Public Law, Private Law, Code of Civil Practice, and Code of Criminal Procedure; each of these was divided into titles, and these further subdivided into chapters. In the *Compiled Code* this four-fold division was dispensed with as having no special value. The twenty-six titles of the *Code of 1897* were divided into thirty-four titles, and over three hundred new chapters were added. Twenty-one of the old title headings were slightly altered.

⁷ *Laws of Iowa*, 1919, Ch. 50; Van der Zee's *A Review of the Work of the Iowa Code Commission* in *THE IOWA JOURNAL OF HISTORY AND POLITICS*, Vol. XVIII, pp. 480-483.

⁸ *Code of 1924* (Editor's Introduction), p. xxvi.

Title III was broken up into two new ones covering "Courts of Record of Original Jurisdiction" and "Supreme Court", and Titles XIX, XX, XXIII, and XXVI were reduced to the status of chapters under other titles. While eleven subjects formerly appearing as chapters were raised to the prominence of titles. This new compilation of laws and the bills presented by the Code Commissioners were to be used as stepping stones toward the further work of codification, which it was hoped would be completed at a special session of the General Assembly.⁹

There was, however, a difference of opinion regarding the manner in which the program of codification should be carried forward. The members of the Code Commission were of the opinion that a special session should be called for the completion of this work. Governor W. L. Harding, on the other hand, was of the opinion that it could and should be done at the regular session — there being no good reason why the legislature could not "meet from six to ten hours a day in the work of Code Revision." The Governor contended that by combining the work of the special and regular session the State would be saving about \$300,000.

On the other hand a large number of the members of the legislature and many others thought that codification could be successfully accomplished only in a special session so that careful consideration could be given to each bill. The law of the Thirty-eighth General Assembly creating the Code Commission was unique since it "requested" the Governor to call a special session of the legislature to complete the task of codification. Notwithstanding this legislative request and the advice of other prominent citizens Governor Harding continued to assert his belief that the work of codification should be done in the regular session, and on March 6, 1920, announced that he did not intend to

⁹ *Code of 1924* (Editor's Introduction), p. xxvii.

call an extra session. Thus the problem of codification was turned over to the Thirty-ninth General Assembly.¹⁰

On November 16, 1920, an informal meeting of members-elect of the Thirty-ninth General Assembly was held at the Savery Hotel in Des Moines, seventy-eight Representatives and thirty-seven Senators attending the caucus at their own expense of time and money. This meeting resulted in the selection of a committee composed of six members from each house to consider the problem of code revision and to recommend to the General Assembly a plan of procedure. Accordingly on the first day of the session — January 10, 1921 — this committee submitted its report and suggested that code revision be postponed to a special session. This recommendation was based upon the experience of the General Assembly in connection with the codes of 1873 and 1897. The committee, however, wished to expedite the work of the special session, and accordingly offered a resolution, which was adopted, providing that as much of the work of revision as possible be done during the regular session, and that a Joint Committee on Code Revision be appointed to supervise the work.

With a view to devoting as much time as possible to code revision, a concurrent resolution was passed fixing the second legislative day in March as the final date for the introduction of all bills except appropriation and committee bills, and providing that only as many code bills be brought upon the calendar for passage on that date as it was believed could be passed. In accordance with a recommendation of the Joint Committee on Code Revision eight special committees were appointed in each house, comprising all the

¹⁰ Van der Zee's *A Review of the Work of the Iowa Code Commission* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XVIII, pp. 524, 526. For details of the controversy relative to calling a special session the reader is referred to *The Des Moines Register* for January 7, 27, 28, February 9, 11, 23, 25, 27, 29, and March 8, 9, 1920.

members of the Assembly, and these committees, under the direction of the Joint Committee on Code Revision proceeded to verify the *Compiled Code*. Reports were made in mimeograph form and filed with the Code Editor who transferred the data to a set of books prepared for the purpose so that by a system of marks the approval or disapproval of a particular section by the legislative checking committee might be observed at a glance. Much time was consumed in this work, and fourteen of the sixteen committees completed their work. Although the work of verification was never approved by the General Assembly, the work was valuable in showing the real character and content of the Code.¹¹

Early in March it became apparent that little could be done during the regular session aside from verifying the *Compiled Code*. On March 8th, a concurrent resolution was offered providing for a special session to revise the code — such session to convene on the first Monday in June, 1921. This proposition was not considered and two weeks later was withdrawn by the author. Another concurrent resolution which provided for a special session to meet not later than November 28, 1921, was then introduced but it failed of passage. On March 28th, however, a concurrent resolution was introduced declaring that a special session to revise and codify the laws was necessary and advisable. This resolution was adopted. To facilitate the work of the special session, all code bills were assigned to standing committees and referred to sub-committees with a view of having reports ready at the beginning of the special session. Such reports, however, were never made.¹²

When it became evident that code revision would not be

¹¹ Briggs's *The Legislation of the Thirty-ninth General Assembly of Iowa in THE IOWA JOURNAL OF HISTORY AND POLITICS*, Vol. XIX, pp. 496, 497.

¹² Briggs's *The Legislation of the Thirty-ninth General Assembly of Iowa in THE IOWA JOURNAL OF HISTORY AND POLITICS*, Vol. XIX, pp. 498, 499.

completed at the regular session of the Thirty-ninth General Assembly, an act was passed which provided for bringing the work preparatory to codification up to date. In addition to publishing the acts of the regular session of the General Assembly in the usual form of session laws, the Code Editor was directed to prepare a supplement to the *Compiled Code*, containing the new legislation arranged according to the titles, chapters, and sections of the *Compiled Code*. This resulted in the *Supplement to the Compiled Code, 1921*. Aside from this, provision was made for the revision of the Code Commission bills so as to harmonize them with the legislation of the Thirty-ninth General Assembly.¹³

The legislature placed the supervision of this revision work in the hands of the Joint Committee on Retrenchment and Reform. After some deliberation this committee decided that time and money would be saved by the preparation of explanatory notes or statements for each of the code revision bills. Accordingly a "brief" was prepared for each bill. Each brief was in the form of a three-column table. In the first column was the section of the bill, in the second the section or sections of the code which was rewritten in this particular section of the bill, and the third contained explanatory matter relative to changes, additions, and omissions. These briefs were published in book form. The number of bills was also increased from 253 to 262.¹⁴

Again it was hoped by members of the legislature that an extra session might be called in which to complete the work of codification, but Governor N. E. Kendall, like Governor Harding, favored the idea of disposing of the work during

¹³ *Laws of Iowa, 1921*, Ch. 333; Briggs's *The Legislation of the Thirty-ninth General Assembly of Iowa* in *THE IOWA JOURNAL OF HISTORY AND POLITICS*, Vol. XIX, p. 499.

¹⁴ *Briefs of Code Commissioners' Bills, 1922* (Editors' Preface), p. iv.

the regular session. Accordingly no extra session was called and the work was carried over to the regular session of the Fortieth General Assembly.

When the Fortieth General Assembly convened on January 8, 1923, one of the principal problems to be dealt with was that of codification. On the first day of the session a concurrent resolution was adopted, providing that eight Senators and eight Representatives be appointed as a joint committee to consider the matter of code revision and report by January 15th as to whether it was advisable for the regular session to undertake the revision of the code, and if so, to recommend methods of procedure. On the following day Governor Kendall delivered his biennial message in which he restated his opinion that this work could and should be done during the regular session, and called attention to the fact that much of "the mechanical drudgery of revision" had been already performed through the work of the Code Commission. Moreover, he expressed the belief that the magnitude of the legislative task had been "vastly exaggerated".¹⁵

On the same day on which the message was delivered the joint committee above referred to was appointed. Two days later a report was made in which it was recommended that the General Assembly proceed at once with the work of code revision, with the understanding that the consideration of general legislation should not be restricted in any manner on account of such code revision work. The committee further reported that it had been assured by the Governor that if the work of codification could not be completed during the regular session, that a special session would be called for that purpose. The committee therefore offered the following recommendations: (1) that the code revision bills be immediately introduced in both houses,

¹⁵ *Journal of the House of Representatives*, 1923, pp. 14, 31.

that they be numbered respectively from one to two hundred and sixty-two inclusive, and that general bills commence with the number two hundred and sixty-three; (2) that such bills be immediately referred to the appropriate standing committees of the Senate and House as recommended by the Joint Code Revision Committee of the Thirty-ninth General Assembly; and (3) that the Lieutenant Governor and the Speaker of the House of Representatives be requested to appoint a Joint Code Revision Committee which should have general charge and oversight of the work of code revision.¹⁶

This committee was appointed, and on January 19, 1923, it made its report setting forth a detailed recommendation relative to the method of disposing of code revision bills.¹⁷

The session of the Fortieth General Assembly was a particularly busy one, in which there were no less than 1606 bills introduced. Of this number 250 were code revision bills, which as companion measures were introduced into both houses. Fifty-four of these bills were passed by both houses and signed by the Governor.

Long before the end of the session, however, it became apparent that the work of code revision would not be completed. Accordingly, in order to keep the laws compiled up to date, provision was made for the issuing of another supplement, including the legislation of the Thirty-ninth and Fortieth General Assemblies, to be designated as the *Supplement to the Compiled Code, 1923*. The preparation of amendments to the code revision bills to make them harmonize with the legislation of the Fortieth General Assembly was also authorized and the supervision of the work was entrusted to the Committee on Retrenchment and Reform. Moreover, on April 16th Governor Kendall called a

¹⁶ *Journal of the House of Representatives*, 1923, p. 142.

¹⁷ *Journal of the House of Representatives*, 1923, pp. 260, 261.

special session of the legislature to convene two days later. At this meeting emergency business only was transacted and an adjournment was taken until December 4, 1923, when the General Assembly reconvened for the real work of codification.¹⁸

Immediately upon the convening of this session the committee on code revision made a report in which it recommended that during the session no bills be introduced except the printed bills numbered from one to two hundred and eighty-three inclusive, designated as Code Commission bills, bills for legalizing acts, bills for editing and printing the code, bills providing for salaries and expenses of the extra session, and bills prepared and reported by the joint tax commission. This was amended by striking out the provision relative to tax commission bills and adopted in the amended form.

A study of the bills of the extra session shows that code revision bills, introduced in both houses in identical form, were numbered from 1 to 283 inclusive. House Files numbering 54a, 60a, 68a, 88a, and 261a were also classed as code revision bills, thus increasing the number to 288. In this numbering, however, 73 numbers were omitted because bills so numbered had been disposed of in the regular session — 54 passed, 14 withdrawn, and 5 indefinitely postponed. Accordingly of the 288 measures considered as code revision bills 215 were actually dealt with in the extra session. Of this number 196 were passed by both houses and approved by the Governor. The remaining bills were disposed of in the following manner: two passed the House and failed in the Senate; four failed on vote in the Senate; five were indefinitely postponed by the Senate; three were

¹⁸ Briggs's *The Legislation of the Fortieth General Assembly of Iowa* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XXI, pp. 509, 510; *Journal of the House of Representatives*, 1923, pp. 1809, 1810.

indefinitely postponed by the House; and five were withdrawn in the House.¹⁹

As a rule odd numbered bills were first considered for passage in the Senate, and even numbered bills were first considered in the House. As has already been indicated, the members of the legislature were of the opinion that each of the code bills should be carefully considered, and not simply accepted as presented by the drafters and passed as a matter of form. Notwithstanding this fact 196 of the 215 code revision bills were enacted into laws while only 19 failed of passage — thus leaving the law with reference to the subject matter dealt with in these 19 bills unchanged. Moreover, it is to be noted that most of the measures which failed of passage were of minor importance. During the consideration of the code revision bills, however, amendments were frequent. Indeed only about 30 of the 215 measures passed in the identical form in which they were originally presented. Such amendments usually brought about only slight alterations in the wording, though in some instances important changes were made.

Most of the measures passed at the extra session became effective ninety days after the close of the session, but a few acts, because of their immediate need, were put into operation by publication. The legislation based upon the code bills of this session produced 6152 sections of the law now included in the *Code of 1924*, while 7875 sections of this volume were taken without change from the existing law embodied in the *Compiled Code of 1919* and the *Supplement to the Compiled Code, 1923*.²⁰

An interesting feature of the code revision work was the

¹⁹ *Journal of the House of Representatives, 1923-1924 (Extra Session)*, p. 12; *Index and History of Senate and House Bills, 1923-1924 (Extra Session)*, p. 2.

²⁰ *Journal of the House of Representatives, 1923*, pp. 260, 261; *Code of 1924 (Editor's Introduction)*, p. xxvi.

manner in which sections taken from the existing law, on the one hand, and from the code bills, on the other, were brought together in the form of the present code. Laws passed prior to the publication of the *Compiled Code of 1919* which had not been changed were carried into the *Code of 1924*. Frequently, however, a section of the *Compiled Code of 1919* had been changed or readjusted by the Thirty-ninth or Fortieth General Assembly, thus giving it a new form in the *Supplement to the Compiled Code, 1923*. If this were the case and there were no code bills in the extra session upon this subject the law as thus compiled became a part of the new code. If, however, a code bill were passed it superseded the prior existing law, and became a part of the present code.

For example there was in the *Code of 1897* a section relative to the destruction of liquor. This law was amended by the Thirty-eighth General Assembly by the passage of a section consisting of sixty lines. One provision of this section provided that a judge might direct the disposition of liquor by ordering it to be destroyed, or by ordering any portion thereof consisting of alcohol, brandies, wine, or whiskey delivered for medical or scientific purposes to any State or other reputable hospital. The last four lines of this section stipulated that the statute should be construed so that the disposition of liquors under the provisions of the act should constitute a destruction thereof within the meaning of such statute.

At the regular session of the Fortieth General Assembly this section was repealed and seven short sections enacted in lieu thereof. The four lines above referred to were enacted as one section of the new law and designated as the "Interpreting Clause". Accordingly these lines appear in the *Supplement to the Compiled Code, 1923* as a separate section but with the wording unchanged from the original.

In the extra session of the Fortieth General Assembly this subject was presented in the form of a code bill which was adopted without amendment—the result being a much clearer statement of the law than had previously existed. This is only one of many instances where the work of codification resulted in bringing together the existing law and presenting it in a more convenient form.²¹

NATURE OF THE CODE OF 1924

The *Code of 1924*, as stated in the editor's introduction, is a compilation rather than a code. It is in fact an extensively amended *Code of 1897* compiled in one volume and containing the following:

1. All the sections of the *Code of 1897*, the *Supplement of 1913*, and the *Supplemental Supplement of 1915*, of a *general* and *permanent* nature, which were still in force at the close of the extra session of the fortieth general assembly.
2. All the sections of the acts of the thirty-seventh, thirty-eighth, thirty-ninth and fortieth (regular) general assemblies of a *general* and *permanent* nature, which were still in force at the close of the extra session of the fortieth general assembly.
3. All the sections of the acts of the extra session of the fortieth general assembly (known as the code revision session) of a *general* and *permanent* nature.

The sections which constitute the *Code of 1924* were not all enacted, therefore, at a single session of the legislature. Indeed, some of the sections were enacted at the extra session of the Twenty-sixth General Assembly in 1897, while others were enacted at each succeeding session down to and including the extra session of the Fortieth General Assembly. These code sections, therefore, are to be found in the original enrollments of all the sessions of the General Assembly from 1897 to 1924.

²¹ *Code of 1897*, Sec. 2416; *Laws of Iowa*, 1919, Ch. 266, Sec. 1; *Compiled Code of 1919*, Sec. 977; *Code of 1924*, Sec. 1999.

Since the *Compiled Code of 1919* and the *Supplement to the Compiled Code, 1923*, were compiled preparatory to, and as stepping stones toward, the larger work of codification, it may be briefly stated that the *Code of 1924* "is in fact the *Compiled Code* and the *Supplement of 1923*, plus the legislative changes made in those two volumes by the adoption of code revision bills presented to the legislature at the extra session of the fortieth general assembly."²²

About two-thirds of the sections of the *Compiled Code of 1919* and the *Supplement to the Compiled Code, 1923* — constituting about half of the contents of these volumes — were not changed by the legislature of the extra session and appear in the new code with the wording unchanged. There are 14,027 sections in the new code. Of these 7875 were brought unchanged from prior existing compilations of the law, while the remaining 6152 sections were made up from the original enrolled bills of the extra session of the Fortieth General Assembly.²³

The *Code of 1924*, including the index, is a volume of 1955 pages. In the rewriting of sections of the law at the special session an attempt was made to clarify its meaning, and set it forth in simple and concise language. Moreover, the volume was printed on thin but durable paper. Thus it is more compact, and in many respects superior to any previous compilation of the laws of the State. The index, which was prepared by Jacob Van der Zee, constitutes nearly three hundred pages of the volume. It is detailed, inclusive, and accurate, thus rendering the contents of the volume accessible, even to the non-professional student of law. The volume does not contain annotations, as it was deemed advisable to publish these in a separate volume, thereby reducing the size of the code.

²² *Code of 1924* (Editor's Introduction), pp. xxv, xxvi.

²³ *Code of 1924* (Editor's Introduction), p. xxvi.

Since the adjournment of the legislature much criticism has arisen from the fact that the new code was not entirely reënacted at the special session, with a clause repealing all former statutes, thus making it a genuine code. That the need of such action has been exaggerated can scarcely be doubted, since the *Code of 1924* will be used in the same manner as if all of its provisions had been adopted at one session of the legislature. In fact a section of the new code provides that printed "copies of the statute laws of this or any other of the United States published under the authority thereof shall be admitted in the courts of this state as presumptive evidence of such law." Conclusive evidence, however, of what the law is can be found only in the enrolled bills, but as a matter of fact these are rarely referred to in the administration and enforcement of the law. Thus the question of whether or not the code should have been entirely reënacted, with a repealing clause, is not a vital one. Moreover, this question will become even less significant as the plan adopted by the Fortieth General Assembly for continuous code revision and the publication of all the statutory law every four years is carried into effect.²⁴

PROBLEMS OF CONSTRUCTION

Since the *Code of 1924* is a compilation and not a code in the sense of being entirely enacted at a single session of the legislature, it presents certain problems of construction which should be clearly understood. O. K. Patton, who was engaged in the actual work of revision, has presented these problems in the following words:

"Inconsistencies and conflicts in the Code of 1897 were dealt with by construing them together and giving to them such a construction as would give full force to all the sec-

²⁴ *Code of 1924*, Sec. 11312.

tions. Indeed, technically speaking, all the sections of that code were part of one legislative enactment, although the several titles were enacted as separate acts. Justice Emlin McClain, speaking on this point, said in the case of *Kenyon v. Cedar Rapids*: 'The whole Code is to be construed as one body of law, and each part is to be taken in connection with other parts bearing on the same subject.'

"Under the new code, however, when two sections are in conflict or overlapping it will be necessary, before applying the ordinary canons of construction, to ascertain the date of their enactment. If one of the sections was enacted subsequent to the other it would seem that the doctrine of implied repeal might be applicable, as it is well settled that when the terms of two sections of law are manifestly inconsistent, the older is repealed by implication. Of course in such a case the repugnancy would have to be very clear and the conflict irreconcilable, because repeals by implication are not favored by the courts.

"Another matter of importance which may arise in construing the new code is with reference to the re-enactment of former sections of law. In this connection the following language of the Iowa court is of interest:

" 'The repeal and simultaneous re-enactment of substantially the same statutory provisions is not to be construed as an implied repeal of the original statute, but a continuation thereof, so that all interests, under the original statute, remain unimpaired. The same rule applies to general revisions of existing laws that are substantially re-enacted. In practical operation and effect, the new statutes are to be considered as a continuance and modification of old laws, rather than as an abrogation of the old and the re-enactment of the new ones.'

"It has been pointed out that only about one-half of the sections in the Code of 1924 were enacted at the special code

revision session and a great many of these sections were merely restatements of existing law; there was no intention on the part of the drafters to change the law in these instances; their plan was merely to simplify it. In this connection it is important to note that the Supreme Court of Iowa has held that a statute need not be reenacted in exactly the same words as the former statute in order to have this effect of continuity — it is enough if the revision is in ‘substantially the same language’ as the original act and there is a ‘manifest purpose to continue the old law.’ Indeed it has been held that ‘changes made by a revision of the statutes will not be construed as altering the law unless it is clear that such was the intention.’ In view of these decisions it seems clear that the greater portion of the legislation enacted by the special session of the Fortieth General Assembly is a continuation of the old law as well as that portion of the Code of 1924 which is merely a compilation of the law as it existed prior to the special session, since the bulk of the code revision work consisted merely in a restatement of existing law.”²⁵

Recent experience has shown that allowing the statutes to go untouched for long periods of time before attempting to put them in order by codification or revision entails an enormous expense. In order to avoid this situation a plan has been devised for continuous codification and republication of the statute law every four years.²⁶ Under this plan the Reporter of the Supreme Court is designated as Code Editor and it is his duty: (1) to submit such recommendations as he deems proper to each General Assembly for the purpose of amending, revising, and codifying such portions of the law as may be conflicting, redundant, or ambiguous;

²⁵ Patton's *The Iowa Code of 1924* in *The Iowa Law Bulletin*, Vol. IX, pp. 10, 11.

²⁶ *Code of 1924*, Sec. 156.

(2) to prepare the manuscript copy of laws passed at each General Assembly, to arrange these in chapters, and prepare an index for the same; and (3) to edit and compile the code after each even-numbered session of the General Assembly.

Further provisions are made for the publication of annotations. This plan provides for the future publication of the statutes of the State in a form similar to the *Code of 1924*.

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THE LEGISLATION OF THE EXTRA SESSION OF THE FORTIETH GENERAL ASSEMBLY OF IOWA

Activity incident to codification of the laws of Iowa began in 1919. Members of the Thirty-eighth General Assembly hoped that an extra session would be called for the purpose of codification, but Governor W. L. Harding failed to call the special session in 1920, as did Governor N. E. Kendall in 1921 or 1922. Moreover, in his biennial message of 1923 Governor Kendall stated that study of the subject had confirmed his conviction that revision could be effected at the regular session of the legislature.¹

Many Senators and Representatives were of a contrary opinion, but finally it was agreed that as much of the work of codification as possible should be done during the regular session with the understanding that if the task were not completed at the end of the one hundred day period a special session would be convened. Accordingly a special message on the general status of code revision was sent to the Governor from each of the houses on April 16, 1923, which set forth that it had been found to be impossible to complete the task within the one hundred day limit.²

On the same day the Governor issued his proclamation calling the Fortieth General Assembly in special session to convene at ten o'clock in the morning of April 18th for the purpose of concluding the "revision and recodification" of the law.³

¹ *Journal of the Senate*, 1923, p. 43.

² *Journal of the Senate*, 1923, pp. 1610, 1611; *Journal of the House of Representatives*, 1923, pp. 1810, 1811.

³ *Journal of the House of Representatives*, 1923, pp. 1809, 1810; *Journal of the Senate*, 1923, p. 1611.

The legislature met, as provided by the call of the Governor, on April 18, 1923, and adjourned without day on July 30, 1924. During this time, however, recesses were taken from April 18, 1923, to December 4, 1923; from December 22, 1923, to December 27, 1923; from December 31, 1923, to January 2, 1924; and from February 28, 1924, to March 5, 1924; and from April 26, 1924, to July 22, 1924.⁴

Indeed the session may be divided into three periods: the first on April 18, 1923, when emergency business was transacted; the second, from December 4, 1923, to April 26, 1924, during which time the code revision was completed and a number of other measures adopted; and the third from July 22 to July 30, 1924, which was devoted to the correction of errors and attending to other matters relative to completion of codification of the law.

The great task of the special session of the Fortieth General Assembly was the codification of the law but a number of emergency measures and temporary acts were also passed, particularly during the period from December 4, 1923, to April 26, 1924. Indeed, an act approved on April 12, 1924, directed the printing board to prepare and cause to be printed a volume of the session laws of the extra session of the Fortieth General Assembly. This law directed that only the special acts and those taking effect on publication be printed in the volume.⁵ Later in the session another act was passed which provided for the publication of a supplement to this volume to contain the acts adopted subsequent to July 22, 1924.⁶

The session laws as published consist of one hundred and

⁴ *Journal of the House of Representatives, 1923-1924 (Extra Session)*, pp. 10, 200, 212, 938, 1711; *Journal of the Senate, 1923-1924 (Extra Session)*, pp. 8, 204, 230, 795, 1542.

⁵ *Acts of the Fortieth General Assembly (Extra Session)*, Ch. 1.

⁶ *Acts of the Fortieth General Assembly (Extra Session)*, Ch. 33.

five chapters. Of this number thirteen chapters were the result of Code Commission bills and were printed in this volume because of their immediate need and because of the requirement that they should become effective upon publication. These measures are chapters five, dealing with primary election laws; six, relative to corporations; seven, city elections; eight and twenty-five, highways; nine, insurance; ten, banking; eleven, coöperative associations; thirteen, electric transmission lines; sixteen and seventeen, schools and school districts; nineteen, compensation of county attorneys; and seventy-eight, cities and towns. In addition to these it should be noted that chapter twenty-three, dealing with the subject of bovine tuberculosis, originated as House File Number 68a — being related to the subject dealt with in File Number 68 of the Code Commission bills. Since all bills numbering from one to two hundred and eighty-three were code bills this measure, although strictly not a code bill was treated as such. Thus fourteen of the one hundred and five temporary or special acts of the extra session of the Fortieth General Assembly as published in the session laws may be disposed of summarily as being code bills, although a few of these will be further discussed in connection with other subjects. Chapter twelve, dealing with policemen's and firemen's pension funds, although introduced by the Code Commission, was designated as House File Number 296 and accordingly was not included as one of the regular code bills. One of the acts of the extra session corrected errors in the cross references contained in sections 4124, 4158, 4164, and 5777 of the *Compiled Code of 1919*.¹

Publication and Distribution of the Code.—In addition to the acts which provided for the publication of special

¹ *Acts of the Fortieth General Assembly (Extra Session), Ch. 82.*

acts and those taking effect on publication the special session also passed a law for the publication of the new code. It described the make-up and set forth the contents of the volume. The Code Editor was to put copy into proper shape and to this end was given power to correct typographical, grammatical, and clerical errors as well as to transpose and divide sections when necessary. The duty of having the volume printed as soon as possible was assigned to the State Printing Board, and a code supervising committee composed of three members of the House of Representatives and two members of the Senate appointed by the presiding officers of their respective houses was created to exercise general supervision of editing, printing, and binding the code. Finally, an appropriation to pay the expenses of publishing the code was made.⁸

To save the expense of a special session for future code revision, provision was made whereby the Code Editor shall prepare a new edition of the code after each even-numbered regular session of the General Assembly and the Printing Board is directed to "forthwith cause the same to be printed." This will give Iowa a new code every four years.

The method of distributing volumes of the code and session laws was altered. The duty of selling copies and of making free distribution was given to the Superintendent of Printing. Under the old law the former activity was entrusted to the county auditor while the Secretary of State was given charge of the latter. Some changes were also made in the number of copies of the code and of the volumes of session laws to be distributed to various agencies. For example the State Library will henceforth receive one hundred and twenty-five copies instead of one hundred and fifty copies and the Historical Department and State His-

⁸ *Acts of the Fortieth General Assembly (Extra Session)*, Ch. 3.

torical Society will each receive five copies instead of ten as provided in the old law.⁹ Late in the session an act was passed amending the law relative to distribution of the code, and fixing the selling price at five dollars. By the provisions of another act the Superintendent of Printing was authorized to refund any amount in excess of five dollars which had been paid for a code.¹⁰

The duties of the Supreme Court Reporter as editor of the code in regard to recommendations to the legislature for change in the form of laws and the preparation of current acts for publication were collected and restated. Provision was also made for referring his recommendations to committees of the legislature.

Duties of Superintendent of Printing.—The duties of the Superintendent of Printing were amended by adding the duty of having custody of and taking charge of the distribution and sale of all codes, session laws, books of annotations, tables of corresponding sections, digests, and reports of the Supreme Court. He was also directed to perform duties which are incident to his position or which are ordered by the Printing Board. Finally he was specifically made responsible on his bond for the public property coming into his possession.¹¹

The State Legislature.—The most important measure relating to the General Assembly passed at the special session is perhaps the joint resolution which proposes to amend Section 34 of Article III of the Constitution of Iowa so that no county shall be entitled to more than one Senator. The resolution also directs that this measure be

⁹ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 3, Secs. 1-29.

¹⁰ *Acts of the Fortieth General Assembly* (Extra Session), Chs. 84, 85.

¹¹ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 3, Secs. 21-25.

published according to law and refers it to the next General Assembly.¹²

Another joint resolution provided that the services of all officers and employees of the special session should be paid for at the same rate as in the regular session of the General Assembly. The action of the Retrenchment and Reform Committee in selecting certain extra help for the session was approved and compensation was provided for the persons selected.¹³

The legislators also amended the law relative to their compensation for service at an extra session by providing that they should be paid semi-monthly instead of at the close of the session.¹⁴

The Budget.—A very comprehensive budget system for State and local governmental agencies was provided. The office of Director of the Budget was created. The Director is to be appointed by the Governor for a term of six years and his appointment must be confirmed by a two-thirds vote of the Senate. He is required to give a bond of ten thousand dollars to be approved by the Governor and may be removed by the Governor for malfeasance in office. The approval of a majority of the Senate is necessary for removal, however, when that body is in session and at other times the Director may be suspended by the Governor who may make an appointment to fill the vacancy thus created subject to the approval of the Senate at its next meeting.

The Director is made responsible for carrying out the provisions of the budget law. To this end he is given power, with the approval of the Executive Council, to employ a State Accountant and such assistants as are neces-

¹² *Acts of the Fortieth General Assembly* (Extra Session), Ch. 76.

¹³ *Acts of the Fortieth General Assembly* (Extra Session), Chs. 73, 74, 75.

¹⁴ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 26.

sary. He is also empowered to conduct hearings and can compel the production of evidence.

The several departments of the government are directed to furnish to the Budget Director on or before the first day of August of even-numbered years statements of their respective receipts, expenditures, and askings for the ensuing biennium. Hearings upon these statements for the benefit of public officials and taxpayers are to be conducted and by the first of November of even-numbered years the Director must have prepared and filed in his office the State budget report. This report must set forth the askings of each department or agency of the State government for the next biennium, together with the Director's recommended appropriation for each and his reason for any increases or decreases. The report must also contain a statement of expenditures and appropriations made during the two preceding biennial periods and statements of receipts for the same period. Finally, the report must set forth the estimated income from taxes and other sources for the ensuing biennium.

This report, together with an appropriation bill and an explanation of its contents also prepared by the Director, must be submitted to the Governor on or before the first day of December in even-numbered years. The Governor is directed to submit the report and the bill to the General Assembly at the time of delivering his biennial message. This bill must then be referred to the Appropriations Committees of the two houses.

It will be noted from this general description that Iowa has installed the executive type of budget, headed by a Director appointed by the Governor. This really makes the Governor responsible for the preparation of the budget. Although the law does forbid any other department or agency of government except the Governor to present ask-

ings or to suggest sources of revenue to the legislature except upon request of either house or of a standing committee it does not forbid the legislators from introducing other appropriation bills nor does it say that the General Assembly shall refrain from considering such measures.¹⁵

The budget law also provides for stopping permanent annual appropriations and contains specific appropriations for various agencies of the government but stipulates that these are to run only until July 1, 1925.

The Director of the Budget is also instructed to audit the accounts of the several departments of the State government annually, the work to be carried out through the State Accountant who must report the financial condition of each agency.¹⁶

Before any county, city, town, township, school district, the State Fair Board, the State Board of Education, or the State Board of Control may let a contract for public improvements costing more than \$5000 a public notice must be given that a contract is to be let and interested persons must be given an opportunity to appear at a public hearing and file objections to the proposed plans, specifications, or terms of the contract. After hearing the objections the governing body must make its decisions in the matter. Appeals may be taken to the Budget Director from the decisions of the councils of second class cities or towns, and from boards of consolidated or urban independent school districts if the amount of the contract is more than \$10,000. If the amount of the contract is more than \$25,000 contracts made by cities of the first class, the State Fair Board, the State Board of Education, and the State Board of Control may likewise be appealed. An appeal from any of the last

¹⁵ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 4, Secs. 1-30.

¹⁶ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 4, Secs. 31-37, 82-122.

three agencies must be considered by an appeal board composed of the Director of the Budget and two other persons appointed in the same manner as the Budget Director but for a term of four years.

A similar process must be complied with before bonds may be issued by these governmental agencies. The law provides specifically that contracts which are let or bonds which are issued contrary to the provisions of the law shall be void.¹⁷

This method of letting contracts and issuing bonds is designed to give taxpayers control over expenditures by the agencies to which it applies. The chapter of the budget law known as the "local budget law" is designed to give them control over tax levies also. Before taxes may be levied by any public body or corporation the tax levying agency of such body shall prepare a budget showing estimates of expenditures and receipts for the next year. These must be published and an opportunity for hearing the objections of taxpayers must be given. The board must then make its decision in the matter and certify the budgets to the county auditor who must certify these local budgets to the Budget Director and make abstracts of them to be published in the financial report of the county. In the closing days of the session an act was passed amending the law relative to the local budget, and a section was added stipulating that supplemental estimates of particular funds might be made for levies of taxes for future years when authorized by law.

In the performance of these activities the various tax-levying agencies are under the supervision of the Budget Director who is directed to exercise supervision over them and to prescribe for them all necessary rules, instructions,

¹⁷ *Acts of the Fortieth General Assembly (Extra Session)*, Ch. 4, Secs. 38-59a.

forms, and schedules. Failure on the part of any officer to perform the duties required of him by the budget law is defined as a misdemeanor and constitutes sufficient cause for his removal from office. Finally it should be mentioned that the Director must make an annual report to the Governor concerning his administration of the budget system.¹⁸

Elections.—The primary election law was codified and adopted in substantially the same form as the code bill. No radical changes were made in the primary election law except that the nominations for offices which become vacant subsequent to the time of filing nomination papers for the primary election and prior to the time of holding the conventions may be made by the respective conventions. The new law was also extended to cover nominations of candidates for special elections.

A few other changes were made but the principal difference between the former law and the law as it now stands is that its provisions have been rearranged, more clearly stated, the sections made shorter, and that it has been harmonized with other legal provisions.¹⁹ The law was declared in effect on publication so that it would be available for the primary election of 1924.

Appropriations.—It was the intention of the budget law to repeal all permanent annual appropriations made by the legislature for the various institutions under the State government. In order to supply these institutions with funds during the time to elapse until the first budget appropriations should be made by the General Assembly, existing appropriations of this character were continued until July

¹⁸ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 4, Secs. 60–81, Ch. 86.

¹⁹ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 5.

1, 1925.²⁰ Some other appropriations were also made by the Fortieth General Assembly at its special session. These are set forth in the following table.

APPROPRIATIONS BY THE EXTRA SESSION OF THE FORTIETH GENERAL ASSEMBLY			
CHAPTER	FOR WHAT	AMOUNT	PERIOD
3	Printing of codes, session laws, documents, and reports	Amount necessary	
27	Iowa School for the Deaf Emergency appropriation for support and maintenance	\$10,000.00	Available May 1, 1924
	Emergency appropriation for support and maintenance	15,000.00	Available August 1, 1924
	Emergency appropriation for support and maintenance	5,000.00	Available any time subsequent to June 1, 1924, but prior to March 1, 1925
28	Iowa State College of Agriculture and Mechanic Arts, extension of heating system, equipment for heating plant, water plant, and sewage system	10,000.00	Lump sum
29	Drainage assessment against State property incident to the drainage of Tow Head Lake in Calhoun County	22,000.00	Lump sum
30	Cost of advertising laws of extra session of the Fortieth General Assembly	2,000.00	Lump sum

²⁰ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 4, Secs. 82-122.

CHAPTER	FOR WHAT	AMOUNT	PERIOD
30	Executive Council, cost of laundering towels for extra session of the Fortieth General Assembly	\$300.00	Lump sum
30	Pay for employees of House and Senate during recess of the General Assembly	Amount necessary	
30	John Hammill, Lieutenant Governor, as President of the Senate	\$20.00 per day	Duration of extra session
30	J. H. Anderson, Speaker of the House of Representatives	10.00 per day	Duration of extra session
30	L. W. Ainsworth, postage, telephone, and telegrams	\$16.00	Lump sum
30	A. C. Gustafson, postage, telephone, telegrams, and preliminary expenses	40.35	Lump sum
30	Des Moines Rubber Stamp Works, badges and rubber stamps	14.00	Lump sum
30	Chaplains, fees for extra session of Fortieth General Assembly	2,000.00	Lump sum
30	D. C. Mott, for services rendered at historical building during February, 1924	143.68	Lump sum
30	T. C. Cessna, C. F. Letts, and John Hansen for expenses to investigate Willetts farm	30.00	Lump sum
31	Lieutenant Governor Hammill, telephone, telegrams, and express	23.07	Lump sum
31	Compensation to eighteen clerks at \$4.00 per day each	76.00	Lump sum
31	Expenses incident to investigation of office of Superintendent of Public Instruction	Amount necessary	
31	Witness fees and stenographic service incident to investigation of Insurance Department	\$528.20	Lump sum

CHAPTER	FOR WHAT	AMOUNT	PERIOD
31	Traveling expenses of members of Board of Parole	\$500.00	Until January 1, 1925
31	L. W. Ainsworth, for postage	5.00	Lump sum
32	Executive Council, to purchase farm at Mt. Pleasant	72,000.00	
71	Emergency appropriation to the Department of Agriculture for the Weather and Crop Service	200.00	
72	Expenses of members of Iowa Child Welfare Commission appointed by Governor Kendall	2,500.00	
89	Fred L. Maytag, salary as Director of the Budget	972.23	Lump sum
89	Margaret Dickey, service as stenographer	225.00	Lump sum
90	Funds to be used in carrying into effect the provisions of the budget law	Amount necessary	Until June 30, 1925
101	L. W. Ainsworth, for postage	\$ 1.75	Lump sum
101	A. C. Gustafson, telephone, telegraph, and postage	3.30	Lump sum
101	Underwood Typewriter Co., for rent on typewriters	15.00	Lump sum
101	Office Equipment Co., for rent on typewriters	15.00	Lump sum
101	Typewriter Exchange, for rent on typewriters	12.50	Lump sum
101	Employees	150.00	
101	Employees	Amount necessary	Until close of extra session
102	W. F. Wiley, janitor service	\$4.00 per day	Until close of extra session
102	Otha Blue, janitor service	4.00 per day	Until close of extra session

CHAPTER	FOR WHAT	AMOUNT	PERIOD
102	S. L. Harvey, janitor service	\$4.00 per day	Until close of extra session
102	George Lacey, janitor service	4.00 per day	Until close of extra session
102	W. N. Neff, elevator service	4.00 per day	Until close of extra session
102	Frank Blagburn, assistant postmaster	4.00 per day	Until close of extra session
102	Ella Johnson, assistant matron	3.00 per day	Until close of extra session
103	Mileage to officers of the extra session	Amount necessary	Until close of extra session

Poll Tax.—The law relative to the payment of road poll tax was modified so as to apply to able bodied male residents of the township outside the limits of cities and towns instead of only to citizens.²¹

Compensation of the County Attorney.—The salary schedule for county attorneys fixed by the Fortieth General Assembly was changed so as to allow in addition to their regular compensation the fees allowed attorneys in suits for the county on written instruments where judgment is obtained, attorney's fees in criminal cases, and fees for fines collected where he appears for the State, but not otherwise.²²

City or Town Plats.—The law relative to platting of subdivisions or additions to cities and towns was modified so that the statement that the land to be platted is free from incumbrance and that the fee title is in the proprietor must

²¹ Acts of the Fortieth General Assembly (Extra Session), Ch. 21.

²² Acts of the Fortieth General Assembly (Extra Session), Ch. 19.

now be made by a reputable attorney instead of by the county recorder. Moreover, when the plat is filed with the city clerk the statement that the plat is made with the consent of the proprietor must not only be signed by the owner himself but if he is married by his spouse also.

The provisions of the law relative to platting for assessment and taxation by the county auditor when owners of land fail to do so was changed by leaving out the statement that the powers of the auditor did not apply to real estate situated in cities acting under special charters, so that the powers of the auditor in this regard would seem to be extended to these municipalities also.

When three persons take steps to have a city or town area resurveyed because of loss of plat or because the plat is deemed to be defective they must not only have the consent of the original proprietor if he is alive and known, as provided by the old law, but must also have an order from the district court to the effect that the resurvey is necessary. Provision is made for filing objections in the matter and the court must make the final order.

Funds for Policemen's and Firemen's Pensions.—The law authorizing cities and towns to levy taxes for firemen's and policemen's pension funds was modified by giving the council of any commission governed city with more than one hundred and twenty-five thousand inhabitants — Des Moines — power to levy a tax of one-half mill for each of these funds in addition to the one-half mill tax which any city or town coming under the provisions of the law is authorized to levy. Another provision, however, specifies that no city may levy an amount for either of these funds so as to create a balance of more than ten thousand dollars at the end of any fiscal year.²³

²³ *Acts of the Fortieth General Assembly (Extra Session), Chs. 12, 78.*

Elections in Commission Governed Cities.—The law regulating nomination and election of officers for commission governed cities was codified. No changes in the content of the law were made but they were rearranged, shortened, and the statement of the law was improved.²⁴

Taxation in Special Charter Cities.—The law relative to taxation in special charter cities was amended and codified, setting forth in detail the manner in which tax levies should be made, the percentage upon which they are based and the proportion which shall be paid into the county and city treasury respectively.²⁵

Taxation for Parks.—The law authorizing taxation for the maintenance of parks in commission governed cities was also amended. The result of this change is that armories are now included among the buildings for the erection of which the city council can authorize a tax levy.²⁶

Improvement Bonds.—The former law relative to the issuance of improvement bonds by cities under commission form of government was likewise amended. The purpose of this change was to correct an error where reference was made to the preceding section of the law, instead of to the “second” preceding section.²⁷

Certification of Teachers.—A joint resolution approved by the Governor on April 28, 1924, provides that no regulations or orders issued by the State Superintendent of Public Instruction or by the Board of Educational Exam-

²⁴ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 7.

²⁵ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 92.

²⁶ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 93.

²⁷ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 91.

iners in regard to educational qualifications of teachers shall be retroactive so as to apply to any teacher who has had three years of successful teaching experience. Moreover, after the qualifications of any person as a teacher in any type of school has once been approved regulations above referred to can not prevent such a person from continuing to teach in the school for which he has qualified.

Although no school may be deprived of State aid because it employs the teachers referred to in the preceding paragraph the law may not be construed to limit the power of any board of education in selecting and discharging teachers.²⁸

School Taxes and Bonds.— Chapter eighteen of the *Acts of the Extra Session of the Fortieth General Assembly* provided for the publication of the code revision bill in regard to school taxes and bonds and caused that law to go into effect by publication on April 23, 1924, instead of ninety days after the date of final adjournment of the session on July 30, 1924.²⁹

Historical Department.— Section five (5) House File Number 114 set forth the powers of the Board of Trustees in assigning space in the Historical Building. In the closing days of the session a law was passed which slightly amended this section.³⁰

The State Banking Department.— A number of changes were made in the law relative to the State Banking Department. The organization or reorganization of savings banks and trust companies within the State was made subject to

²⁸ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 77.

²⁹ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 18.

³⁰ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 100.

the approval of the Superintendent of Banking. Any person aggrieved by the action of the Superintendent, however, may appeal to the Executive Council within ten days after the action has been taken. The Executive Council must then fix the date for hearing and render the final decision in the matter.

The Superintendent was given authority to fix the compensation of the deputy superintendent of banking and of all bank examiners at a sum not to exceed \$3800 and upon his recommendation the Executive Council may increase the pay of these officers but not over \$600 annually nor so as to make the salary greater than \$4800. Salaries and expenses are still to be paid out of the fees collected for making the examinations. The Superintendent is also directed to furnish to the Auditor of State a list of salaries paid by the Department.³¹

Prison Labor Contracts.—A joint resolution was passed which legalized the action of the State Board of Control in cancelling contracts with the Reliance Manufacturing Company and the Sterling Company for the employment of prisoners in the State Penitentiary and the Men's Reformatory. According to this action the contracts were cancelled on July 1, 1924. The Board of Control, however, was authorized to make new contracts but these could not extend beyond July 1, 1927. This provision was vigorously opposed by organized labor on the grounds that it was unfair competition and an attempt was made to take from the Board of Control the power to let contracts for prison labor. This failed, but a compromise was effected so that after July 1, 1927, prison labor shall be used only to produce supplies needed by the State and municipalities. The Board of Control and the legislature deemed the three years

³¹ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 15.

necessary in order to make necessary changes in the manufacturing establishments of the two institutions so that they could be utilized in so-called "non-competitive labor". The terms of these contracts must be such, however, as to be equivalent to contracts made for free labor.³²

Legalizing Acts.—Of the ninety-one measures other than code bills enacted by the Fortieth General Assembly at its extra session forty-one were legalizing acts. Eleven of these legalize the transfer of funds by governing bodies: one by the county treasurer, four by the boards of directors of school districts, one by township trustees, two by city councils, and three by county boards of supervisors.³³ Two of these eleven also legalize the levy of the tax by which the funds transferred were raised.³⁴ Six acts were required to legalize elections held for the purpose of authorizing the issues of bonds: two for school districts³⁵ and four for various purposes of city government.³⁶ Three acts legalize acts and proceedings of county boards of supervisors.³⁷ Warrants issued by city councils were legalized in three instances³⁸ and in two of these the issuance of negotiable bonds also.³⁹ In one instance warrants issued by a board of supervisors were validated,⁴⁰ and in one case a city ordi-

³² *Acts of the Fortieth General Assembly* (Extra Session), Ch. 49; *The Des Moines Register*, January 5, 1924, p. 10.

³³ *Acts of the Fortieth General Assembly* (Extra Session), Chs. 38, 45, 46, 50, 53, 55, 63, 65, 67, 70, 105.

³⁴ *Acts of the Fortieth General Assembly* (Extra Session), Chs. 53, 65.

³⁵ *Acts of the Fortieth General Assembly* (Extra Session), Chs. 51, 54.

³⁶ *Acts of the Fortieth General Assembly* (Extra Session), Chs. 40, 56, 59, 60.

³⁷ *Acts of the Fortieth General Assembly* (Extra Session), Chs. 39, 61, 62.

³⁸ *Acts of the Fortieth General Assembly* (Extra Session), Chs. 57, 58, 66.

³⁹ *Acts of the Fortieth General Assembly* (Extra Session), Chs. 57, 58.

⁴⁰ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 35.

nance granting franchises was legalized.⁴¹ A cemetery tax levied by the county board of Monroe County was also legalized,⁴² while in another instance the certifications and levy of taxes and assessments on property by municipalities was made legal.⁴³

The act of the school board of the independent district of Waterloo in failing to separate the bond fund from the general fund of the district in certifying the levy to the county auditor and in the published statement was made legal.⁴⁴

Ray C. Robey incurred an indebtedness of \$1719.16 in attorney's fees while preventing the board of directors of the independent consolidated school district of Waterville from entering a contract for the sale of school bonds that would have caused the district to pay \$8580.75 as premium for selling the bonds. By his act he saved the district \$6880 and the board voted to reimburse him for the expenses incurred. This act of the board was legalized.⁴⁵

Two acts were required to legalize appropriations made by the General Assembly to the State Board of Control. Appropriations to that body had been made in 1917 and 1919 by joint resolution instead of by bill. This action was validated.⁴⁶

Two legalizing acts relate to the acts of banks performed after their articles of incorporation had expired. The directors of the St. Anthony Savings Bank, and of the Farmers' Savings Bank of Beaconsfield were not aware of the fact that the articles of incorporation of their institu-

⁴¹ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 104.

⁴² *Acts of the Fortieth General Assembly* (Extra Session), Ch. 64.

⁴³ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 87.

⁴⁴ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 52.

⁴⁵ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 37.

⁴⁶ *Acts of the Fortieth General Assembly* (Extra Session), Chs. 47, 48.

tion had expired in 1922. The legislature legalized the acts performed by these banks subsequent to that time and in addition authorized a renewal of their articles of incorporation.⁴⁷

An act was passed to legalize the consolidation of the Keokuk and Hamilton Bridge Company with the Hancock County Bridge Company and another act amended the legalizing act in which the name of the Keokuk and Hamilton Bridge Company appears as the Keokuk and Hamilton Mississippi River Bridge Company.⁴⁸

The acts performed by Laura Smith Day as a notary public under her maiden name, Laura Smith, subsequent to her marriage but prior to the expiration of her commission as notary public were validated.⁴⁹ A general act to validate the acts of any notary public under similar circumstances was also passed⁵⁰ and a third act specifies that the acknowledgements and certifications of instruments to which a corporation is a party are valid even when the notary public making the acknowledgement or certification is a stock holder or officer in the corporation.⁵¹

Another legalizing act of a general nature validates the proceedings of the boards of supervisors and petitions relative to the establishment of the county area tuberculosis eradication plan that were performed prior to January 1, 1924. The county treasurer is specifically authorized to collect the taxes levied for this purpose.⁵²

An act was also passed which legalized the acts of the Secretary of Agriculture in enrolling counties under the

⁴⁷ *Acts of the Fortieth General Assembly* (Extra Session), Chs. 68, 69.

⁴⁸ *Acts of the Fortieth General Assembly* (Extra Session), Chs. 41, 42.

⁴⁹ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 43.

⁵⁰ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 34.

⁵¹ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 36.

⁵² *Acts of the Fortieth General Assembly* (Extra Session), Ch. 24.

accredited area plan for the eradication of bovine tuberculosis, and declared that such enrollment was valid.⁵³

Fred L. Maytag was appointed acting Director of the Budget, and Joseph Mattes and W. P. Dawson acting members of the appeal board. These men entered upon their respective duties before their appointment was confirmed by the Senate. A law was passed legalizing such acts as they performed prior to the confirmation.⁵⁴

Validation of Land Titles.—Three laws were passed for the purpose of authorizing the Governor and Secretary of State to issue patents for land to which there was not a clear title.⁵⁵

Motor Carriers.—A law passed by the Fortieth General Assembly, which defined “motor carriers”, exempted from the operation of the law carriers used to convey farm products “in the vicinity of and from a distributing point”. This provision was changed so that carriers used to convey farm products are exempt from the operation of the law no matter where the products are being conveyed.⁵⁶

Sale of Land by Executive Council.—The Executive Council was authorized to sell three lots of ground which had been acquired by the State in connection with the extension of the Capitol grounds. Prior to the sale, however, the Executive Council was to apply to the Chief Justice of the Supreme Court for the appointment of three disinterested persons as appraisers who should make a report to the Council of the value of the land. The sale could then be

⁵³ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 94.

⁵⁴ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 88.

⁵⁵ *Acts of the Fortieth General Assembly* (Extra Session), Chs. 44, 80, 81.

⁵⁶ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 2.

made but the compensation not less than the sum fixed by the appraisers.⁵⁷

Chiropractic.— The law requiring the Treasurer of State to pay into the State treasury on June 30 of each year any surplus, exceeding five hundred dollars in the fund created to pay the expenses of chiropractic examiners was changed so as to make it necessary for the Treasurer to perform this duty on the first day of January.⁵⁸

Bovine Tuberculosis.— The law authorized the State Department of Agriculture to coöperate with the Federal government for the purpose of eradicating tuberculosis from the dairy and beef cattle of the State. Provision is made for testing, appraising, and disposing of infected animals, and stipulates the amount of indemnity to which the owner is justly entitled. The law relative to this subject as set forth during the early part of the session was again considered and slightly amended just prior to the final adjournment of the session.⁵⁹

Sanitation of Depots.— The law relative to inspection and sanitation of depots and waiting rooms was amended by taking the duty of inspection out of the hands of the hotel inspector and his deputies and placing it under the control of the Department of Agriculture.⁶⁰

*Removal from Hospitals for Insane.*⁶¹— House File Number 84, dealing with charitable, correctional, and penal insti-

⁵⁷ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 79.

⁵⁸ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 22.

⁵⁹ *Acts of the Fortieth General Assembly* (Extra Session), Chs. 23, 95.

⁶⁰ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 97.

⁶¹ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 99.

tutions, was also amended to authorize the removal of insane patients to State hospitals by hospital attendants.

Insurance Premium Tax Refund.—The laws passed by the Thirty-ninth and Fortieth General Assemblies to provide for refund of taxes on insurance premiums erroneously collected was repealed and the Treasurer of State was directed to pay any unexpended balance of appropriations for this purpose into the general fund of the State.⁶²

Jurisdiction over Juvenile Court Cases.—The law relative to neglected and dependent children was amended so as to give the municipal court in counties having a population of less than one hundred thousand jurisdiction over juvenile court cases within its jurisdiction. Formerly only the district court and superior court had such power.⁶³

Report of the Commission on Land Titles.—The Fortieth General Assembly passed an act creating a Commission on Land Titles for the purpose of investigating the laws of Iowa and those of other States with reference to titles to and property rights in real estate. It also directed that the report of this Commission be made to the special session of the Fortieth General Assembly or to the Forty-first General Assembly. This law was amended so as to eliminate the provision for report to the extra session of the Fortieth General Assembly.⁶⁴

Inspection Fees for Scales.—House File Number 261 of the acts of the Extra Session of the Fortieth General Assembly was a bill for the regulation and inspection of foods,

⁶² *Acts of the Fortieth General Assembly (Extra Session)*, Ch. 33.

⁶³ *Acts of the Fortieth General Assembly (Extra Session)*, Ch. 20.

⁶⁴ *Acts of the Fortieth General Assembly (Extra Session)*, Ch. 14.

drugs, and other articles. An act was passed which amended this measure with regard to the fees to be charged for the inspection of scales.⁶⁵

Supreme Court Abstracts.—House File Number 246 of the acts of the Extra Session of the Fortieth General Assembly was a bill relative to procedure in the Supreme Court. The law relative to time of filing abstracts was slightly changed by striking out the word “within” before the phrase “five (5) months after the entry of judgment or order appealed from.”⁶⁶

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⁶⁵ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 96.

⁶⁶ *Acts of the Fortieth General Assembly* (Extra Session), Ch. 98.

AMENDMENT OF THE IOWA CONSTITUTION

One of the essential features of a written Constitution, especially in states where the fundamental law can not be altered by the ordinary methods of legislation, is the provision for amendment. This is a peculiar characteristic of the American Constitutions. Not only does the Federal Constitution contain a provision for amendment, but the Constitutions of the several States contain similar provisions. The fact that in the United States constitutional restrictions are strictly enforced by the courts makes the provisions for amending the fundamental law doubly important. Various methods for amending or revising their Constitutions have been adopted by the American Commonwealths; but, regardless of the method adopted, two essentials stand out as fundamental: first, means must be provided through which a decision may be reached that amendment or revision shall take place; and, second, some sort of procedure must be devised that may be employed in putting the machinery of revision or amendment into operation.

The first Constitution of Iowa as a separate and independent Territory was the Organic Act of June 12, 1838.¹ The territorial government, or the territorial Constitution as it is sometimes called, was not adopted by the people of Iowa Territory but was imposed upon them by Congress. This, however, was not done in any coercive way, for the people of the new Territory welcomed independent organization. The government thus provided contained no provision for its revision or amendment, due to the fact that,

¹ *Laws of the Territory of Iowa, 1838-1839*, pp. 31-40.

since the power to provide for the government of Territories belongs to Congress, the authority to revise or amend that government likewise rests with Congress. The process of amendment, therefore, followed the ordinary course of legislation, and before the lapse of a single year this power was exercised by Congress in regard to the Constitution of the new Territory.²

AMENDMENT OF THE CONSTITUTION OF 1844

The delegates chosen to the constitutional convention of Iowa in 1844, in organizing their convention for the performance of the important task before them, provided in their rules for the appointment of eleven standing committees, to each of which was assigned a particular phase of what might be considered the essential features of a written Constitution.³ Only a few days had lapsed, however, when it was found necessary to provide additional standing committees. Among the new committees appointed was the one on amendments to the Constitution. On this committee Shepherd Leffler, the president of the convention, appointed Richard Quinton, John Taylor, Henry Felkner, Samuel Whitmore, Calvin J. Price, Wright Williams, and Thomas Charlton. The rules of the convention provided that the first person named on every committee should be the chairman thereof and consequently Quinton, a Whig, became chairman of this particular committee, although over two-thirds of the delegates were Democrats.⁴

To this group of men, drawn largely from the agricultural class, fell the responsibility of providing suitable and

² Shambaugh's *History of the Constitutions of Iowa*, pp. 108, 126.

³ *Journal of the Constitutional Convention*, 1844, pp. 12, 14, 15, 214, 215.

⁴ *Journal of the Constitutional Convention*, 1844, pp. 3, 4, 30, 212-215; Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 405-410.

satisfactory means for revising or amending the new instrument of government, if in the future the general welfare of the people should so demand. Four days after their appointment, this committee through their chairman submitted their first report to the convention. This report was read for the first time, laid upon the table, and one hundred and fifty copies were ordered to be printed. As submitted the report read:

Any amendment or amendments to this Constitution, may be proposed in the Senate or House of Representatives, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment or amendments, shall be entered on their journals, with the yeas and nays thereon, and referred to the General Assembly then next to be chosen, and shall be published for six months previous to the time of making such choice; and if in the General Assembly then next chosen as aforesaid, such proposed amendment or amendments, shall be agreed to by two thirds of all the members elected to each house, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments, to the people in such manner and at such time as the General Assembly shall prescribe, and if the people shall approve and ratify such amendment or amendments, by a majority of all the citizens of the State voting for representatives, voting in their favor, such amendment or amendments shall become part of this Constitution; when any amendment or amendments to this Constitution, shall be proposed in pursuance of the foregoing provisions, the same shall, at each of the said sessions, be read three several days in each house. The Legislature shall not propose amendments to the Constitution oftener than once in six years.⁵

The report of the Committee on Amendments was taken up for discussion in convention on Saturday, October 19, 1844, at which time Stephen Hempstead proposed to substitute the word "majority" for the words, "two thirds". This was agreed to. The effect of this amendment was to

⁵ *Journal of the Constitutional Convention*, 1844, p. 55.

make it less difficult to get an amendment through the legislature to which it was referred. It also established more uniformity in the Article on Amendment, in that a majority vote of the members elected to each house in both sessions was required to adopt the amendment.

Wm. W. Chapman then proposed to strike out all after the word "house" in the sixteenth line, which evidently meant the following: "The Legislature shall not propose amendments to the Constitution oftener than once in six years." This provision suggests that the Constitution framers wished to relieve the legislature of the annoyance of being confronted at every session with a lot of proposals for amending the Constitution, and therefore provided that such proposals might be entertained only every sixth year. Since the debates of the convention were never recorded, however, except as now and then some of them were published in the newspapers of that date, nothing in regard to this particular point has been preserved.

It is also possible that the Committee on Amendments intended by this provision that the same amendment, once defeated, should not be proposed oftener than once in six years. The latter view is supported by the fact that following the defeat of Mr. Chapman's proposal, Mr. Hall proposed to amend the provision under consideration by adding the words "the same" after the word "propose", which would have made it read: "The Legislature shall not propose the same amendment to the Constitution oftener than once in six years." The amendment thus proposed by Mr. Hall was agreed to by a large majority, the vote being forty-seven for and twenty-two against adoption. Samuel H. McCrory then wished to change the time limitation from six to four years, but this idea did not meet with the approval of the delegates.

Upon motion of Thos. J. McKean, it was ordered that the

report be further amended by adding the following section:

Section 2. And if, at any time, two-thirds of the Senate and House of Representatives, shall think it necessary to revise or change this constitution, they shall recommend to the electors at the next election for members of the Legislature, to vote for or against a convention, and if it shall appear that a majority of the electors voting at such election, have voted in favor of calling a convention, the Legislature shall, at its next session, provide by law for calling a convention; to be holden within six months after the passage of such law, and such convention shall consist of a number of members not less than that of both branches of the Legislature.

The adoption of this section gave to the legislature the right or authority to submit to the people at any time the question of calling a convention for the purpose of revising the Constitution. It also made it mandatory for the legislature to call such convention not later than six months after its next session should the people vote in favor of constitutional revision at the time such proposition was submitted to them. Another feature of this section worthy of note is that it specified the number of delegates to be chosen to such convention. This section, while it was an improvement of the Article on Amendments, is to be criticized for two reasons. First, because it left to the discretion of the legislature the right to determine when the question of constitutional revision should be submitted, instead of providing specified periods at which this question should be submitted and, in addition, giving to the legislature the authority to submit the question at any other time if it saw fit to do so. The two provisions together form an ideal combination, but either alone is unsatisfactory. The second criticism of this section is that the number of delegates provided would, if such a provision were at present incorporated in the Constitution, be entirely too large for a satisfactory and efficient revision of the Constitution. In 1844 and for a short period follow-

ing this provision would no doubt have proven satisfactory.

Upon the motion of John W. Brookbank the original report on amendment was changed by striking out the words, "for representatives", and inserting in their stead, "for and against said amendment or amendments." In its original form the article would have required a majority vote of all the citizens voting for representatives. The number of electors voting for representatives might be much greater than the number who participated in the vote upon the amendment, and in this case a majority vote cast in favor of amending the Constitution might not be a majority of the vote cast for representatives. The change agreed to made possible the ratification of an amendment to the Constitution by a majority of the votes cast on that question and, from the standpoint of those who favor flexibility in this process, was an improvement.

In the phrase, "by a majority of all the citizens of the State voting for representatives", the words "qualified electors" were substituted for the word "citizen". The time that an amendment adopted by one legislature must be published prior to the election of members of the next legislature was changed from "six" to "three" months and, in the last sentence, the words "General Assembly" were substituted for the word "Legislature". Following these changes the report was ordered to be engrossed and read a third time.⁶

As amended the report read:

1. Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment shall be entered on their journals, with the yeas and nays thereon, and referred to the General Assembly then next to be chosen, and shall be pub-

⁶ *Journal of the Constitutional Convention*, 1844, pp. 55, 87-89.

lished for three months previous to the time of making such choice; and, if, in the General Assembly then next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people in such manner and at such time as the General Assembly shall prescribe, and if the people shall approve and ratify such amendment or amendments by a majority of all the qualified electors of the State voting for and against said amendment or amendments voting in their favor, such amendment or amendments shall become part of this Constitution. When any amendment or amendments to this Constitution shall be proposed in pursuance of the foregoing provisions, the same shall, at each of the said sessions, be read three several days in each house. The General Assembly shall not propose the same amendments to this Constitution oftener than once in six years.

2. And if, at any time, two-thirds of the Senate and House of Representatives shall think it necessary to revise or change this Constitution, they shall recommend to the electors at the next election for members of the Legislature to vote for or against a Convention, and if it shall appear that a majority of the electors voting at such election have voted in favor of calling a Convention, the Legislature shall, at its next session, provide by law for calling a Convention, to be holden within six months after the passage of such law, and such Convention shall consist of a number of members not less than of both branches of the Legislature.⁷

As thus amended the Article on Amendments was read a third time on Tuesday afternoon, October 29th, and passed without further modifications.⁸ That it did not meet with general approval is evident from the following comment in the *Iowa Standard*: "The process of amendment is too tedious and too uncertain to make it wise to look to that as a means of remedying essential defects."⁹

⁷ *Journal of the Constitutional Convention*, 1844, pp. 202, 203.

⁸ *Journal of the Constitutional Convention*, 1844, p. 167.

⁹ Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, p. 208.

Although the method of amending the Constitution was criticized by some as being tedious and slow, this in itself might be regarded as a merit rather than a defect, for the stability of the government organized under the new Constitution would thereby be insured. The process of amendment as prescribed in the Constitution of 1844, however, never became law, for the Constitution having been twice submitted to the people for ratification was each time rejected by them, but nothing indicates that the Article on Amendments was in any way responsible for this defeat.

AMENDMENT OF THE CONSTITUTION OF 1846

The organization of the constitutional convention of 1846 failed to provide for a standing committee to consider amendments to the Constitution, and it also failed to refer this article to any of the standing committees appointed. This apparently was not due to an oversight, for on May 11, 1846, James Grant moved that the Article on Amendments in the old Constitution be printed for the use of the convention. This motion was agreed to.¹⁰ The action thus taken must have been regarded as the first reading of the article, for nowhere in the journal other than here can there be found any evidence that it received a first reading.

On May 14th the Article on Amendments as it appeared in the old Constitution was read a second time following which Sylvester G. Matson moved that the words, "General Assembly", be substituted for the word, "Legislature", which was agreed to. Mr. Grant then proposed to strike out all following the word "house" in line eighteen, which, it seems, was the sentence, "The General Assembly shall not propose the same amendments to this Constitution oftener than once in six years." The object of this proposal apparently was to make the Constitution more flexible

¹⁰ *Journal of the Constitutional Convention, 1846*, pp. 60, 69.

by removing this restriction from the amending process, and when put to a vote the amendment of Mr. Grant was accepted by the convention.

Section 2 of the Article on Amendments provided for the submission to the people of the question of calling a constitutional convention to revise or amend the Constitution at any time the members of the General Assembly so provided by a two-thirds vote. Alvin Saunders, a Whig, offered a motion to substitute the word "majority" for the words "two-thirds" where they occur in this section, but his proposal was not adopted.

Stephen B. Shelledy, also a Whig, then offered to make the process of amendment even more flexible by striking all out of section 1 which has to do with the submission of a proposed amendment to a second legislature before referring it to the people. Adoption of an amendment by both houses of a single legislature was, under this provision, all that was necessary before submitting an amendment to the people. Although this was a wide departure from the procedure of amendment as it appeared in the Constitution of 1844, his proposal was accepted. No further changes being proposed at this time, the article as amended was ordered to be engrossed and referred to the Committee on Revision.¹¹ As thus revised, section 1 of the Article on Amendments read:

1. Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment shall be entered on their journals, with the yeas and nays thereon, and submitted to the people in such manner and at such time as the General Assembly shall prescribe, and if the people shall approve and ratify such amendment or amendments by a majority of all the qualified electors of the State voting for and against said amendment or

¹¹ *Journal of the Constitutional Convention, 1846*, pp. 87, 88.

amendments voting in their favor, such amendment or amendments shall become part of this Constitution. When any amendment or amendments to this Constitution shall be proposed in pursuance of the foregoing provisions, the same shall, at each of the said sessions, be read three several days in each house.

The amendment adopted to section 2, changing the word "Legislature" to "General Assembly" affected its meaning so little that there is no need of repeating it.

When the Constitution of 1844 was before the public, the process of amendment was severely criticized by some as being slow and cumbersome, since under the most favorable circumstances a period of four or five years would lapse before an amendment could be adopted. The process of amendment as now outlined by the convention of 1846, and referred to the Committee on Engrossment and Revision might well have been criticized for going to the opposite extreme so far as the time required for amendment was concerned. Under it an amendment to the Constitution might be effected in a few months. Such a provision if added to our fundamental law would tend to make it very flexible and unstable.

It was not, however, destined to remain in the Constitution, perhaps because the Democrats realized that to make the Constitution so flexible would be dangerous to a number of their most cherished principles incorporated in that instrument. The very next day after the Article on Amendments had been referred to the Committee on Engrossment and Revision, Mr. Grant moved that the vote on the question of referring this article be reconsidered and, the Democrats being in the majority, the motion carried by a vote of twenty-one for and nine against. Of the twenty-one voting in favor of reconsideration all were Democrats except one, and of the nine voting against the proposition all were Whigs.

Following the vote for reconsideration, Samuel A. Bissell

proposed to strike out the whole article and to substitute the following in its stead:

If at any time the General Assembly shall think it necessary to revise or change this Constitution they shall recommend to the electors at the next election for members of the General Assembly to vote for or against a Convention and if it shall appear that a majority of the electors voting at such election are in favor of calling a Convention, the General Assembly shall at its next session provide by law for calling a Convention, to be holden within twelve months after the passage of such law, and such Convention shall consist of a number of members not less than the number of members of the House of Representatives.

Immediately following this proposal, Stephen B. Shelledy offered to strike out the whole article on amendments and to insert the provision, "this Constitution shall never be altered or amended."¹² The *Iowa Capital Reporter*, a Democratic publication, in commenting upon Mr. Shelledy's proposal, declared that it denied to the people the right to alter, amend, or abrogate their organic law, and added:

This doctrine of immutability has been boldly maintained by a somewhat formidable party, we are aware, with reference to a King's charter — a fundamental law which was given to the people of a state by crowned head — but we were not prepared to see the same doctrine advanced with reference to a code of laws formed by the people themselves. In this enlightened day, were it not for the record which we have before us, the fact would appear quite incredible. But the yeas and nays have been recorded, and the fact will be handed down to posterity, solemnly attested by the signatures of the President and Secretary, that five sage constitution makers, by their votes, deliberately declared the code which they had framed, to be immutable, above the reach of the people and forever binding upon posterity.¹³

¹² *Journal of the Constitutional Convention*, 1846, p. 93.

¹³ Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 328, 329. The paper from which this quotation was taken was partly mutilated.

The Constitution makers here referred to were Stephen B. Shelledy, George W. Bowie, Stewart Goodrell, Sanford Harned, and George Hobson, all Whigs.¹⁴ It was they who voted in favor of Mr. Shelledy's proposal to strike out the Article on Amendments and insert the words, "this Constitution shall never be altered or amended." To infer, however, as the *Iowa Capital Reporter* did, that these men actually believed the Constitution to be immutable and that it should forever be binding upon posterity is to do them an injustice; it was these men who believed the Constitution to be an imperfect instrument, and it was they who had put forth strenuous efforts to make the process of amendment as flexible as possible. As has already been indicated, it was Mr. Shelledy who proposed that an amendment to the Constitution need be passed by only one legislature instead of two, and apparently he was responsible for getting this proposal adopted. When the question of reconsidering the vote by which this article had been referred came up for a vote, every Whig except one — John Ronalds — voted against reconsideration. Thus it is evident that the Whigs did not consider the Constitution a perfect instrument, but, on the contrary, that they desired certain changes which they could not then accomplish because they were the minority in the convention.

On the other hand, it was the Democrats who wished to place the new instrument of government beyond the reach of their opponents by making the process of amendment as difficult as possible. Therefore when Mr. Bissell proposed to strike out the entire article and to substitute a method whereby no amendments could be made and revision could be accomplished only by the calling of a convention, Mr. Shelledy, as a rebuke to the party in control, proposed that

¹⁴ *Journal of the Constitutional Convention*, 1846, p. 93; Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 414, 415.

the Constitution should never be altered or amended. His proposal was defeated by a vote of five for and twenty-three against. It was these five who voted in the affirmative who had aroused the ire of the *Iowa Capital Reporter*.

No action was taken at this time upon the proposal of Mr. Bissell, but instead the article with the amendment proposed thereto was referred to a special committee consisting of three members — James Grant, Samuel A. Bissell, and Stephen B. Shelledy.¹⁵ Here again the Democrats dominated and it was to be expected that the forthcoming report would favor a difficult procedure for amending the fundamental law of the State. On the same day that they were appointed the committee through their chairman, Mr. Grant, recommended that the Article on Amendments to the Constitution be as follows:

1. If, at any time, the General Assembly shall think it necessary to revise or amend this Constitution, they shall provide, by law, for a vote of the people for or against a Convention, at the next ensuing election for members of the General Assembly, and in case a majority of the people vote in favor of a Convention, said General Assembly shall provide for the election of delegates to a Convention, to be held within six months after the vote of the people in favor thereof.

Immediately following this report, Mr. Grant moved that the convention adopt it. This was done and Mr. Grant further moved that the amended article be engrossed and referred to the Committee on Revision. This was also agreed to.¹⁶ Three days later, on Monday afternoon, May 18th, the article was reported back to the convention and passed its third reading.¹⁷

The Article on Amendments in the Constitution of 1846

¹⁵ *Journal of the Constitutional Convention*, 1846, pp. 93, 94; *The Iowa State Almanac and Statistical Register*, 1860, p. 19.

¹⁶ *Journal of the Constitutional Convention*, 1846, pp. 94, 95.

¹⁷ *Journal of the Constitutional Convention*, 1846, p. 105.

thus adopted provided but a single method for enlarging, revising, or amending the fundamental law, and that method was not one to be highly commended. In the first place, it left to the discretion of the General Assembly the right to determine when the question of revision should be submitted to the people; second, the only means that could be employed for such revision was the calling of a convention which is always an expensive proposition; third, it did not specify the number of delegates to be chosen to such convention, thus leaving further discretion in this matter in the hands of the General Assembly; fourth, it did not specify to what extent the convention might go in making amendments or in revising the Constitution, nor did it provide that after such amendment or revision had taken place that such changes must first be ratified by the people before becoming a part of the supreme law of the State. All of these things might easily have been provided for by legislation, but there was nothing in the Constitution which guaranteed that they should be done.

The attitude of the Whigs upon this particular phase of the new Constitution is well expressed in an address by Wm. Penn Clarke to the electors of Muscatine, Johnson, and Iowa counties. Speaking of the Constitution he said:

Not a single letter can be stricken from it, without calling a Convention. This is impolitic, as well as unusual: impolitic, because it prevents those modifications which experience may suggest; and unusual, because it is unlike the Constitution of any of the other States. If we adopt the Constitution, we take it with the probability that it will remain what it is for many years. The people will not only be loath to incur the expense of another Convention, but the history of the past shows, that after they have set the machinery of government in motion, and become familiar with its operation, it is difficult to induce them to make a change. Thus, in Virginia, Ohio, and several other States, effort after effort has been made for several years, to get the consent of the people to call Con-

ventions to frame new Constitutions for those States, the population and business of the communities having outgrown their present Constitutions; but so far without success. And it will be seen, by looking at the dates, that the Constitutions of the several States have averaged twenty-five years of service. The reason of this is obvious. As soon as a State Government is completely organized, a body of men is created, whose interest it is to sustain the existing state of affairs. Those who fill the State, county, township, and even school-district offices, with their friends and dependents, are all opposed to a change, for the single reason that that change may rotate them out of office. This class, bound together by the strong tie of self-interest, wields a powerful influence, and, by concert of action, may give tone to public sentiment. This office-holding aristocracy would exist here, as well as elsewhere; and thus the Constitution, acknowledged to be defective by its warmest friends, would be strengthened and sustained by those who gained their bread from it. To overcome this influence, and obtain the formation of another fundamental law, would require such a torrent of popular condemnation as we need not anticipate short of a quarter of a century. In view of all the influences, partizan and pecuniary, which will be brought to sustain this instrument, if adopted, I regard the provision under consideration as tantamount to telling the people that they shall not be permitted, for a great number of years, to alter or abolish this "*model*" of a Constitution. If the people will but put the yoke upon their necks, it is well provided with fastenings to keep it there.

But it may be well for the people to ascertain, if they can, why this article is thrown into its present shape, instead of providing as do all the other State Constitutions, that the Legislature may propose amendments to the Constitution, and the people ratify or reject them. No good reason, certainly, can be assigned for this restriction on the rights of the people.—The only motive I can think of, which could induce the insertion of such a provision, is this: The framers of the Constitution were well aware that they had departed from the legitimate business entrusted to them; that they had incorporated into their work certain partizan dogmas which the people have never approved, and the expediency and propriety of which were still subjects of discussion.—They feared that experience might demonstrate, as it has done heretofore, that

the forebodings of their opponents were well-founded, and their predictions had become sober realities. The prohibition of incorporations and internal improvements — the experiment with the judiciary — the restrictions upon the inalienable rights of the people — might not work to the advantage of the commonwealth; and they well know, that when the citizens felt themselves hampered, and their interests blasted, under the operation of these provisions, that they would be prompt to throw off the burthen. Under such provisions for amendment as are to be found in the other State Constitutions, the obnoxious articles of this instrument could be laid aside, without destroying the whole fabric of government, or exciting the hostility of all who have a personal interest in supporting the government. Hence, in order to establish a partizan creed, and render it permanent, even at the expense of the people's prosperity and happiness, this article on Amendments was inserted. It is for the people to decide which they will choose, their own welfare or this partizan Constitution. The one is opposed to the other.¹⁸

This was but one of the many phases of the Constitution that Mr. Clarke pointed out as being defective. However, in spite of its shortcomings, sentiment throughout the Territory was favorable to the idea of statehood, and when the new instrument of government was presented to the people for their ratification on August 3, 1846, it was adopted by the small majority of four hundred and fifty-six votes. It was not until December 28th, following, that Iowa was proclaimed to be fully admitted to the Union of States.¹⁹ Although a "feeling of satisfaction with the new political status"²⁰ swept the Commonwealth, it was not long until agitation was started for the amendment of certain phases of the Constitution. As has been pointed out, the Constitution of 1846 could not be amended and the machinery for

¹⁸ Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 358-361.

¹⁹ Shambaugh's *History of the Constitutions of Iowa*, pp. 324, 327.

²⁰ Shambaugh's *History of the Constitutions of Iowa*, p. 329.

revision was difficult to put into operation. Consequently efforts were made in every legislature to have the question of calling a convention to revise the Constitution submitted to the people for their approval. Finally, the Fifth General Assembly passed an act for this purpose, and in August, 1856, ten years from the time that the people ratified the Constitution, they cast a majority vote of eighteen thousand six hundred and twenty-eight votes in favor of calling a convention to revise it.²¹

AMENDMENT OF THE CONSTITUTION OF 1857

The final organization of the constitutional convention of 1857 provided for twelve standing committees of five members each. Tenth in the order of their enumeration was the Committee on Amendments to the Constitution, whose membership consisted of Wm. A. Warren, David Bunker, John T. Clark, Timothy Day, and Hiram D. Gibson. Of these men two were Democrats and three Republicans. The Republicans being in the majority in the convention, it is only natural that they should be in the majority on the Committee on Amendments to the Constitution. While the work of this committee may be said by some to have been of minor importance, in a larger sense it may be considered as being of the greatest significance, for the vital point in a written Constitution is the method whereby it may be altered or amended. Upon that essential feature depends the guarantee of individual liberty, and the degree to which the Constitution will conform to the actual conditions of the political life of the community.²²

A few days after the appointment of the Committee on

²¹ Shambaugh's *History of the Constitutions of Iowa*, pp. 329-335.

²² *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 4, 21, 22; *The Iowa State Almanac and Statistical Register, 1860*, p. 23.

Amendments J. C. Traer offered the following resolution: "*Resolved*, That the committee to whom was referred so much of the Constitution as refers to amending the same be instructed to enquire into the expediency of so amending the Constitution as to provide for a vote for or against holding a Convention to amend the Constitution at least once in ten years." This resolution was adopted and referred according to instructions.²³

On Monday, January 26, 1857, the Committee on Amendments to the Constitution presented a majority report, which following its reading was laid upon the table in the customary manner. One hundred copies were ordered to be printed for the use of the convention. The report read:

Sec. 1. Any amendment or amendments to this constitution may be proposed in both houses of the General Assembly, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment shall be entered upon their journals, with the yeas and nays taken thereon, and referred to the Legislature to be chosen at the next general election, and shall be published as provided by law for three months previous to the time of making such choice; and if in the General Assembly so next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people in such manner and at such time as the General Assembly shall provide; and if the people shall approve of and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the General Assembly voting thereon, such amendment or amendments shall become a part of the constitution of this State.

Sec. 2. At the general election to be held in the year one thousand eight hundred and sixty-seven, and in each tenth year thereafter, and also at such times as the General Assembly may by law provide, the question "Shall there be a convention to revise the

²³ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 33, 34.

constitution and amend the same?" shall be decided by the electors qualified to vote for members of the General Assembly; and in case a majority of the electors so qualified voting at such election, shall decide in favor of a convention for such purpose, the General Assembly at its next session shall provide by law for the election of delegates to such convention.

(Signed)

W. A. Warren, Chairman,
John T. Clark
David Bunker.²⁴

No minority report was submitted at this time, for there was little disagreement upon the majority report. The Democratic members of the committee, however, were of the opinion that the second section, which provides for the submission of the question of amendment to the people once in ten years, should be worded differently and for this reason they did not concur in the report of the committee. A few days later they submitted the following report:

The committee on amendments to the Constitution have had the same under consideration, and the undersigned beg leave to make the following Minority Report:

That in our opinion, it is inexpedient to submit the matter of amendment of the Constitution to the people once in ten years, unless the people so require, through their Legislature; and we therefore submit the following to be substituted in place of Section 2, in the Majority Report:

If, at any time, the General Assembly shall think it necessary, to revise or amend this Constitution, they shall provide by law for a vote at the next ensuing election for members of the General Assembly. In case a majority of the people vote in favor of a Convention, said General Assembly shall provide for an election of Delegates to a Convention to be held within twelve months after the vote of the people in favor thereof.

H. D. Gibson,
Timothy Day.

²⁴ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, p. 36.*

This minority report was also laid upon the table and one hundred copies were ordered to be printed for the use of the convention.²⁵

Several days afterward the convention resolved itself into a Committee of the Whole to consider the majority and minority reports on the future amendment of the Constitution. Sheldon G. Winchester opposed the idea of going into a Committee of the Whole for the discussion of these reports. He favored the procedure provided in the Constitution of 1846, and therefore moved to substitute it for the majority report. If the latter were adopted, he feared that every legislature would agitate the question of amending the Constitution, and thereby use up much of their time that should be spent in dealing with legislative matters. Such agitation would consume a great deal of time and be an unnecessary burden of expense. Many of the delegates protested against Mr. Winchester's motion, but it did not come to a vote.²⁶

In speaking of the majority report George Gillaspie said:

I desire to say that I have no fears of the action of the people in regard to any amendments that may be submitted to them by the legislature. But I take the ground that it is wholly unnecessary, and that the people do not desire to have these things brought before them. I intended, if article ten should be adopted from the old constitution, to move to amend by throwing off the clog the gentleman has alluded to, the legislature. I believe that the people of the State have the right to decide for themselves when they will have a change in the constitution; and I believe the proper way to accomplish that object is to permit them to elect their delegates, and send them up here to revise the constitution. If the principles laid down in the report of this committee were to prevail, I am

²⁵ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, p. 80.

²⁶ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 603, 604, 605, 606, 607; *Journal of the Constitutional Convention, 1857*, pp. 218, 219.

satisfied that the people will be harassed from year to year, at every election, by various propositions, and it is very probable that they would sometimes be called upon to vote upon half a dozen different propositions to amend the constitution. There would be no end to it. I am satisfied that the people would be opposed to it. I believe that if we agree to the proposition contained in this report, it would be dangerous to the institutions of this country, for you allow a bare majority to pass these amendments. This constitution is to go to the country as a republican constitution, there being a majority of republicans in this convention. Now if what we are told is to take place shall be fulfilled, if the new party is to destroy and disannul all the work of the party which preceded them, I undertake to say that it would be the policy of the democratic party to eradicate or annul all the changes made in the present constitution. Now a bare majority are to have the power to submit amendments to the constitution to be made in that way, to be voted upon by the people at the suggestion of the General Assembly. I say it is no more than right and fair to provide that a two-third vote of each House shall be required before any proposition can be submitted to the people for the amendment of the present constitution. I am in favor of that for this reason. If there should be anything in the present constitution about to be adopted here, so obnoxious to the people that they desire a change, which they desire the legislature to submit to them to vote upon, there can be and will be a two-third vote, at both sessions of the General Assembly submitting that proposition. If there cannot be a two-third vote, it would be, in my judgment, improper and impolitic to allow a bare majority of the legislature to submit at all times, and upon all occasions, any propositions to amend which they might see fit, and thus harass the people of the country by requiring them to vote at every election upon some proposition or other for the amendment of the constitution. I am opposed to it, and shall be perfectly satisfied with article ten of the old constitution, with that clog, the legislature, stricken out, so as to allow the people to decide for themselves when they will have an amendment of the constitution, and how they will have it.²⁷

²⁷ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, p. 607.*

John T. Clark, who was a member of the Committee on Amendments, defended the machinery of amendment as provided in the majority report, because he was convinced that the new Constitution, however well adapted to current needs it might be, would perhaps in a few years not meet the wants of the people. He pointed out that the State was increasing in population, that its position was changing as to wealth and improvements, and that it was progressing on every hand. How could a Constitution drafted to meet the needs of to-day, he argued, be adapted to meet new conditions five or ten years hence? These were his arguments in behalf of the process of amendments as outlined in the majority report. This, he believed, provided adequate safeguards so that no danger could arise from its addition to the new Constitution. Mr. Clark further stated that this method of amendment was not a new feature in a State Constitution, but had been taken from Constitutions which had been in practical operation from five to twelve years.

Daniel H. Solomon favored the procedure provided for in the old Constitution except that he would amend it by changing the time limit for electing delegates from six months to twelve months after the vote of the people favoring the calling of a convention. He objected to the report of the majority of the Committee on Amendments for two reasons. In the first place he thought it improper that the instrument which defined the powers of the legislature should be formed by that legislature. Here, undoubtedly, Mr. Solomon referred to the provision which gave to the legislature the power to initiate proposed amendments to the Constitution. The fact that the people had final determination as to whether a proposed amendment should be adopted or not seems to have been given no consideration. His second objection was that the proposed machinery of amendment did not preclude subsequent legislatures from

becoming Constitution makers. "In fact", he said, "it becomes a part and parcel of their legitimate duty to inquire into it, and see if any amendment is needed, and if so to go to work to correct it." His proposition was, however, rejected.²⁸

Mr. Gibson, who was a member of the Committee on Amendments and signed the minority report, proposed to amend section one of the majority report so that only one proposition for amending the Constitution could be submitted at any one session of the legislature. This would shield the people against a flood of proposed amendments. It would likewise prevent a system of log-rolling by which some amendments to the Constitution favoring one section of the State would be made to assist in getting amendments through that would assist some other section of the State. His proposal when put to a vote was likewise rejected.²⁹

Robert Gower thought that any proposed amendment to the Constitution should be submitted to the people whenever it had been favorably acted upon by two-thirds of the members of each house of any General Assembly. He therefore offered to substitute for section one of the majority report the following:

Upon the petition of a respectable number of citizens of this State, the General Assembly may, by a vote of two-thirds therein concurring, propose amendments to this Constitution, which may be submitted to the people at their general election; and if a majority of those voting at said election shall vote in favor of said amendments the same shall become a part of the Constitution of this State.

Objection was made to this proposal because it was indefinite in its phraseology; any number of persons, however

²⁸ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 608, 609, 611, 612, 615.*

²⁹ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 603, 612, 613, 615, 618.*

small, might constitute a respectable number. The proposition when put to a vote was rejected.³⁰

Rufus L. B. Clarke was not entirely satisfied with section one of the majority report, and after a number of proposals to amend it had been made without success, he proposed the following substitute:

Any amendment or amendments to this constitution may be proposed in either house of the General Assembly; and if the same shall be agreed to by a majority of two-thirds of the members elected to each of the two houses, such proposed amendment shall be entered on their journals, with the yeas and nays taken thereon, and shall be published, as provided by law, for three months; after which it shall be submitted to a vote of the people, and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the General Assembly, voting thereon, such amendment or amendments shall become a part of the constitution of this State.

This substitute was offered to meet the objection that the plan provided for amending the Constitution as submitted by the majority report would require a period of from four to five years because of our system of biennial sessions of the legislature. Mr. Clarke believed that the people would be fully prepared to vote upon any amendment submitted to them after it had been published for three months in the newspapers of the State.

James F. Wilson, however, objected to this substitute because he believed that if it were incorporated in the Constitution, the requirement that an amendment must receive a two-thirds vote in the General Assembly before it could be submitted to a vote of the people would make amendment practically impossible. A majority vote in his opinion should be sufficient so long as the people had to vote upon the question afterward. He preferred the majority report

³⁰ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, p. 615.

to any substitute that had been offered, and his personal opinion was that it could not be improved, no matter how much effort might be put forth to do so.³¹

J. C. Hall, who had previously offered a substitute for the amendment of Mr. Gibson which was the object of considerable discussion, now offered his proposal in a revised form as a substitute for section one of the majority report. His substitute read:

In case the General Assembly shall deem the amendment of any article of the constitution important, they may provide by law for the submission of the amendment proposed to the people at the next succeeding general election; and if the proposed amendment shall receive a majority of all the votes given at said election, the amendment so proposed shall be declared adopted, and become a part of the constitution of this State. All amendments proposed under this section shall be definitely and specifically defined, using the very words proposed for the amendment, which, with the law submitting it, shall be published at least three months prior to the election. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of said amendments separately; and while any amendment, or amendments, which shall have been agreed upon by one General Assembly, shall be awaiting the action of the electors, no additional amendment or amendments shall be proposed.³²

J. A. Parvin objected to this substitute because it made possible the amendment of the Constitution within so short a period of time that unwise changes in the fundamental law might be made during periods of temporary or local excitement. He was not in favor of sudden changes in the Constitution and he therefore preferred section one of the majority report to any amendment or substitute that had

³¹ *The Debates of the Constitutional Convention of the State of Iowa*, 1857, Vol. I, p. 619.

³² *The Debates of the Constitutional Convention of the State of Iowa*, 1857, Vol. I, p. 621.

been proposed. Immediately following Mr. Parvin's comments upon the amendment in question, a vote was taken upon it and it was defeated, the vote being fourteen in favor of and fifteen opposed to adoption.³³

Thus, out of a considerable number of amendments to or substitutes offered for section one of the majority report in Committee of the Whole, all were rejected, and the section remained as first presented.

Section two of this report which provided for the submission to the people of the question of calling a constitutional convention was then read. John T. Clark, a member of the committee which drafted this provision, favored it because he believed in placing the control of the fundamental law of the State in the hands of the people in so far as it was feasible to do so. "I am unwilling", he said, "to place the constitution of the State out of the direct control of the people, out of their reach, in the hands of a representative body. I believe it should be retained in their possession, within their control; that they should have the privilege themselves to reach that question, without the necessity of legislative enactment. The experience of the past proves the necessity of it. I think that there might be a case in this State in which it would be necessary perhaps to use that power, and when the legislative body might refuse to call a convention in accordance with the wish of the people. That such a case has occurred within the short history of our government as a government, is a sufficient reason to me for introducing a provision which shall render impossible a repetition of an occurrence of that kind."³⁴

Mr. Traer, who likewise wished to leave the matter of

³³ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, p. 622.*

³⁴ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 609, 622.*

amendment with the people, proposed to amend section two so that it would not be necessary for the legislature to enact a law providing for the election of delegates to a constitutional convention, but that the qualified electors should possess the right to select delegates to a convention at the next general election. If this power were left with the legislature as section two then provided, and if the legislature should refuse to provide by law for the election of such delegates after the people voted in favor thereof, the only way that the people could then amend their fundamental law would be by revolution. Such was the opinion laid down by Chief Justice Taney in the famous Rhode Island case, *Luther v. Borden*,³⁵ to which Mr. Traer now alluded. In offering to amend this section it was his chief desire to maintain the rights of the people. However, when a vote was taken upon his proposition, it was defeated.³⁶

Mr. Gibson then called the attention of the convention to the minority report, and moved that it be substituted for section two, now under discussion. The substitute, being a minority proposal, failed to receive the sanction of the delegates. Following its defeat Mr. Wilson proposed a new section which read: "If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately." This proposal was agreed to by the Committee of the Whole without debate.

D. P. Palmer then offered to amend section two by changing the date for the first submission of the question of calling a constitutional convention from 1867 to 1870, which amendment was agreed to. No further changes were made in Committee of the Whole in the report of the Committee

³⁵ *The Debates of the Constitutional Convention of the State of Iowa*, 1857, Vol. I, pp. 622, 626; *Luther v. Borden*, 7 Howard 1.

³⁶ *The Debates of the Constitutional Convention of the State of Iowa*, 1857, Vol. I, pp. 622, 623, 626.

on Amendments to the Constitution, but on the following day the report with the amendments previously agreed to was taken up for consideration by the convention.³⁷ The report with the amendments thereto was accepted without change at this time, although some feeble attempts were made to substitute for both sections of the original report some provisions similar to those offered in Committee of the Whole. These proposals were, nevertheless, rejected, and the report was agreed to as it came from the hands of the Committee of the Whole. The new section, however, became section two, and section two became section three. In this manner the report was submitted for its third and final reading on March 5th, the closing day of the convention.

Mr. Wilson offered to amend section three at this time so that the question of calling a constitutional convention might be decided favorably by a majority of all the votes cast for and against this proposition. As the section stood, a majority of all the votes cast in the election held when this question was being submitted was necessary for the proposition to carry. This in Mr. Wilson's estimation would practically make it impossible to secure a sufficient vote favoring the calling of a convention. The Democrats were rather strongly opposed to this change. They believed that unless a majority of the qualified electors voting at the election were in favor of calling a convention to revise the Constitution it should not be called, but when the question was put upon the adoption of Mr. Wilson's amendment, it was agreed to by a vote of eighteen for and fourteen against. All of those voting in favor of the amendment were Republicans, while of those voting against its adoption twelve were Democrats and two Republicans.

³⁷ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 626, 639.

The amendment was thus carried by a majority of four votes. The question then recurred upon the adoption of the amended article, and it was agreed to by a vote of twenty-one for to twelve against adoption. The final vote cast was purely partisan, all but one of those voting in favor of the article being Republicans and all but one of those opposed thereto being Democrats.³⁸

Thus, the procedure for amending the new Constitution as finally agreed to by the convention was as follows:

Article 10.— Amendments to the Constitution

Section 1. Any amendment or amendments to this constitution may be proposed in either House of the General Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two Houses, such proposed amendment shall be entered on their journals, with the yeas and nays taken thereon, and referred to the legislature to be chosen at the next general election, and shall be published, as provided by law, for three months previous to the time of making such choice, and if, in the General Assembly so next chosen as aforesaid, such proposed amendment or amendments shall be agreed to, by a majority of all the members elected to each House, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people in such manner, and at such time as the General Assembly shall provide; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the General Assembly, voting thereon, such amendment or amendments shall become a part of the constitution of this State.

Sec. 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for and against each such amendments separately.

Sec. 3. At the general election to be held in the year one thousand eight hundred and seventy, and in each tenth year thereafter, and also at such time as the General Assembly may, by law provide, the question, "Shall there be a convention to revise the constitution,

³⁸ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. II, pp. 1031-1033.*

and amend the same?" shall be decided by the electors qualified to vote for members of the General Assembly; and in case a majority of the electors so qualified, voting at such election, shall decide in favor of a convention for such purpose, the General Assembly, at its next session, shall provide by law for the election of delegates to such convention.³⁹

Somewhat later, when the convention was nearing the end of its work, a vote was taken upon the adoption of the new Constitution as a whole, and it was agreed to by a large majority, the final vote standing twenty-five for and seven opposed thereto. Of those voting in favor of the Constitution, twenty-one were Republicans and four Democrats, while all of those opposed were Democrats.⁴⁰

At an election held in August, 1857, the new Constitution was submitted to the people for ratification and the official returns showed that it was adopted by a majority of 1630 votes. The number of votes cast for adoption was 40,311 while 38,681 votes were opposed to adoption.⁴¹

CONSTITUTIONAL AMENDMENT IN IOWA

The procedure for amending the Constitution remains to-day as it came from the constitutional convention of 1857. Under its provisions fourteen amendments to the Constitu-

³⁹ *The Debates of the Constitutional Convention of the State of Iowa*, 1857, Vol. II, pp. 1030, 1031.

⁴⁰ *Journal of the Constitutional Convention*, 1857, pp. 386, 387; *The Iowa State Almanac and Statistical Register*, 1860, p. 23.

⁴¹ Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 257-260. A more recent abstract compiled by the Public Archives Division at Des Moines gives the vote as 40,316 for adoption and 38,856 opposed, giving a majority of 1460 for the Constitution. In this election four counties — Dickinson, Lucas, Wayne, and Woodbury — failed to return their votes officially. The records have since either been lost or destroyed, and so it will never be known what influence these counties might have had upon the vote for the Constitution of 1857. The *Dubuque Daily Times* of September 7, 1857, states that two of these counties gave majorities for the Constitution and two against and that the aggregate vote if taken into account would reduce the majority for the Constitution to 1416.

tion have been adopted — five in 1868, one in 1880, four in 1884, two in 1904, one in 1908, and one in 1916.⁴²

At the regular election in 1920, the people, for the first time since the adoption of the Constitution in 1857, voted in favor of a constitutional convention to revise and amend the supreme law of the State. Without much debate beforehand the question carried by a large majority, the vote being 279,652 in favor of a convention and 221,763 against it, a majority of 57,889 in favor of a convention. Seventy-five counties gave a majority in favor of a convention.⁴³

The General Assembly consequently attempted to comply with the provisions of the Constitution, and on the tenth day of the legislative session a bill for an act providing for such a convention was introduced in the House. This bill was agreed to by a large majority and was sent to the Senate where a practically new provision was substituted for it. The House refused to concur in the Senate's amendments, following which a conference committee was appointed. Their report was rejected and a second conference committee was then appointed but no report was made. During the last day of the session, the House requested that the original bill (H. F. 307) be returned by the Senate and this request was complied with but the General Assembly adjourned without having made provisions for a constitutional convention.⁴⁴

⁴² Shambaugh's *The Constitution of the State of Iowa* (1922), pp. 105-114.

An amendment relating to prohibition adopted in 1882 was declared unconstitutional by the Supreme Court.—See *Koehler and Lange v. Hill*, 60 Iowa 543. Another amendment adopted in 1900, which was an effort to provide for biennial elections was also declared unconstitutional by the Supreme Court. A similar amendment was, however, adopted in 1904.—*State of Iowa v. Brookhart*, 113 Iowa 250; *Lobaugh v. Cook*, 127 Iowa 181.

⁴³ *Iowa Official Register*, 1921-1922, pp. 482, 483.

⁴⁴ *Journal of the House of Representatives*, 1921, pp. 235, 642, 1033, 1042, 1043, 1707, 1976, 2061, 2209, 2211, 2213, 2220, 2222; *Journal of the Senate*, 1921, pp. 932, 1116, 1422, 1423, 1426, 1771, 1772, 1915, 1941.

The failure of the legislature in this regard is defended on the ground that a convention to revise the Constitution was unnecessary, that there was and is no popular demand for revision of the Constitution, that the few changes which are needed could be secured through the ordinary process of amendment, and that a convention would be an unnecessary burden of expense to the taxpayers of the State. It is also said that the people really did not demand or wish for a constitutional convention.

Under section one of the Article on Amendments which provides for amending the Constitution, it is stated that either house of the General Assembly may propose amendments to the Constitution, but no provision is made as to the form in which such amendments shall be submitted. Nor does it provide that the Governor of the State shall play any part in the proposing of amendments to the Constitution. Since no form is provided, this matter is left to the discretion of the legislature. Proposed amendments to the Constitution of Iowa have always been submitted in the form of a joint resolution and upon passage by both houses have been signed by the presiding officer of each house and by the Governor. Upon presentation or reference to the next legislature and upon passage by both houses the signatures of the presiding officers and of the Governor are again attached. This raises the question, are the signatures of these officers, particularly that of the Governor, necessary to the legal passage of an amendment to the Constitution? Justice William H. Seevers in delivering an opinion of the court in the case of *Koehler and Lange v. Hill* said:

It will be observed that the Constitution does not provide in what manner the amendment shall be proposed. Whether it shall be done by a bill or joint resolution seems to have been left to the discretion of the General Assembly to determine. But, in whatever

way proposed, when agreed to, it is provided that it shall be entered on the journal. Now suppose a member of either house had, while it was in session, orally proposed the amendment in question in the form it was agreed to by the electors, and it had been entered at length on the journal, and agreed to, and the amendment so entered had been correctly copied and properly transmitted to the other house, entered at length on its journal, and agreed to, and published as provided by the Constitution and law, and the subsequent general Assembly had agreed thereto as required by the Constitution, and the same had been submitted to the electors, as was done, could it be said it was not constitutionally adopted, because it was not enrolled, signed by the presiding officers of the two houses, and approved by the Governor? If it can be so said, why, or for what reason?

Suppose the Governor had vetoed the joint resolution and returned it, with his objections, to the house in which it originated, and upon being put upon its passage it had failed to receive a two-thirds majority of one or both houses, as provided in Art. 3., section 16 of the Constitution, would this have been fatal to the amendment? No one will so contend. It was not essential, therefore, the Governor should have approved the joint resolution. The Constitution does not so require. There is no provision of the Constitution, nor is there a statute which, by implication, requires that a joint resolution proposing to amend the Constitution shall be signed by the presiding officers of the two houses. Such signing, therefore, is not essential, and may be dispensed with. There is no provision of the Constitution or statute which requires it shall be enrolled. But there is a constitutional injunction, to say the least, that it shall be entered on the journals. In a constitutional sense, the journals constitute and are the primary and best evidence, and the enrolling and signing, as above stated, at best, are only secondary evidence, which may, and can only be considered when the primary evidence has been lost or destroyed.⁴⁵

The explanation of the essential steps provided in the Constitution for initiating amendments, as handed down by the Supreme Court in 1883, has been long since forgotten by many and it has never been brought to the attention of

⁴⁵ Koehler and Lange v. Hill, 60 Iowa 543, at 558.

others. Thus, because the Governor, as well as the presiding officers of both houses, still continues to sign proposed amendments to the Constitution, it is contended by some that such signatures, particularly that of the Governor, are essential to the valid adoption of a constitutional amendment. The fact that doubt upon this point still exists indicates that the provision for the amendment and revision of the Constitution is not clear, and the fact that it has failed to function at times when it should have functioned shows that it is not self-executory as its framers intended it should be.

As has been pointed out the formal process of amendment and constitutional revision has several times been defeated in the history of the Commonwealth, either through misunderstanding as to how measures should be proposed or through the failure of the agents and representatives of the State to perform faithfully the duties of their offices as prescribed in the oath of acceptance. Twice under the Constitution of 1846 the Governor through the exercise of the executive veto prevented the calling of a constitutional convention. Two constitutional amendments adopted by the people have been declared unconstitutional due to technical errors in recording upon the journals of the houses of the legislature; one proposed amendment was defeated in its early stages through failure of publication on the part of the Secretary of State;⁴⁶ and once the General Assembly failed to call a constitutional convention after the people had voted in favor thereof.

If it is desired to make these points definite and the procedure of calling a convention self-executing, it will be necessary to amend the Constitution to cover the following points: first, to make clear whether the signatures of the

⁴⁶ Erbe's *Constitutional Provisions for the Suffrage in Iowa* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XXII, p. 214.

presiding officers and the Governor are necessary for the adoption of a constitutional amendment; second, making it the duty of the Secretary of State or the Governor, instead of the General Assembly, to submit the amendment to a popular vote; third, to provide that, following an affirmative vote by the people on the question of calling a convention to revise the Constitution, delegates shall be elected to such convention upon some definite basis, without the intervention of the General Assembly; fourth, that this convention shall have extensive authority over its members and procedure; and, fifth, that the new or revised Constitution shall be submitted to the people as provided for by the convention.

There is, however, little specific criticism of the Constitution and but little popular demand for its revision. With the exception of the current amendment admitting women to the General Assembly, there is little demand even for amendments and it is probable that no radical changes will be made in the Iowa Constitution for a number of years, at least.

CARL H. ERBE

SOME PUBLICATIONS

The War-Time Organization of Illinois. By Marguerite Edith Jenison. Springfield: Illinois State Historical Library. 1923. Pp. 508. This volume is the fifth in the series, *Illinois in the World War*, edited by Theodore Calvin Pease, and according to the editor's introduction is "an encyclopedic résumé of the civilian and military organization of Illinois — official, semi-official, and private — for the World War."

The volume is divided into ten chapters — State Organizations, describing both the regular and special offices and boards functioning in Illinois during the war period; War Laws and Their Enforcement; Military and Naval Activities, giving brief descriptions of the Illinois National Guard, selective service, camps, military organizations, naval training work; War Finance; Food and the War; Fuel and the War; Labor and the War; War Industries; Welfare Organizations; and War Relief Organizations. An appendix, bibliography, and index are also included.

A large amount of extremely valuable information has been collected in this volume. It is, in many respects, a skeleton history of the part of Illinois and her people in the World War, giving dates, numbers, places, and names connected with various war activities. The collection and compilation of these data evidently entailed an immense amount of correspondence and research work which will furnish valuable guide posts for the historian of the future who may wish to write more in detail of this period.

The Mascoutens or Prairie Potawatomi Indians, Part I, Social Life and Ceremonies. By Alanson Skinner. Milwaukee: The Public Museum of the City of Milwaukee. 1924. Pp. 262. Plates, figures. This bulletin is Number One of Volume Six in the series issued by the Public Museum of the City of Milwaukee and is devoted to an interesting survey of the social activities and cere-

monies of the Mascoutens. In the introduction the author discusses the origin and migrations of the Mascoutens, and indicates how their social ceremonial system although borrowed in part from their neighbors was differentiated enough to be peculiarly their own. Much of the material in the volume was obtained from Wapuka, a member of the Bald Eagle gens and of the Wabash Band of the Mascoutens, and is an unusually comprehensive record of the ceremonial life of the people, and an explanation of their philosophy. Sections of the volume are devoted to such topics as "social organization", "social life", "ceremonial activities", and "ceremonies not connected with the life of the clan". The section on "social life" reveals the customs of the Mascoutens in respect to childbirth, fasting, training of girls, marriage, war, games, seasons, and months, the pantheon, death, and the hereafter. The section on ceremonial activities recites the origin of the various clans, together with the chants of the particular clan and bundle. The entire volume is of particular interest to Iowans who recall that the Mascouten Indians imparted their name to Muscatine Island — a center from which it has spread to Muscatine County and to the city of Muscatine.

Constitutional Doctrines of Justice Oliver Wendell Holmes, by Dorsey Richardson, is a recent monograph published in the *Johns Hopkins University Studies in Historical and Political Science*.

The Negro in South Carolina during the Reconstruction, by A. A. Taylor, the conclusion of a monograph of several sections, is the main contribution found in *The Journal of Negro History* for October, 1924.

A Virginian's Diary in Civil War Days, by Orlin M. Sanford; *The Story of the "Desert Sign Post"*, by Clyde F. Ryan; *Glimpses Into Ancient American Discoveries*, by Jacques J. Heit; and *A Partial View of South Jersey History*, by Alfred M. Heston, are four of the articles in *Americana* for October, 1924.

The Elias Hasket Derby Mansion in Salem, by Fiske Kimball;

Salem Vessels and Their Voyages, by George Granville Putnam; and *Blockade Running During the Civil War*, by Francis B. C. Bradlee, are three of the papers in the October, 1924, issue of the *Historical Collections of the Essex Institute*.

Letters of William Smith, Minister to Portugal; *Letters from Henry Laurens to William Bell of Philadelphia*; and *European Settlements on the East Coast of North America*, by Joseph W. Barnwell, are three of the contributions in *The South Carolina Historical and Genealogical Magazine* for April, 1924.

The Ethnic Position of the Southeastern Algonkian, by Frank G. Speck; *The Origin of the Plains Earth Lodge*, by Ralph Linton; and *Wichita and Caddo Relationship Terms*, by Leslie Spier; are three of the papers in the *American Anthropologist* for April-June, 1924. *The Significance of Certain Traits in North American Maize Culture*, by Ralph Linton, is one of the articles in the issue for July-September.

WESTERN AMERICANA

Ernst C. Krohn has recently published a volume entitled *A Century of Missouri Music*.

The Wisconsin Archeologist for July, 1924, contains *Indian Gravel Pit Burials in Wisconsin*, by Charles E. Brown, and *The Cliff Ruins of the Southwest*, by W. A. Titus.

Cowboys North and South, by Will James, is a volume of western flavor recently published by Charles Scribner's Sons. It is illustrated by the author.

The Papers of James J. Webb, Santa Fé Merchant, 1844-1861, by Ralph Paul Bieber, have been reprinted from the *Washington University Studies*.

Elections in Illinois, by S. A. Burgess, and a *History of the Council Bluffs Branch of the Reorganized Church of Jesus Christ of Latter Day Saints*, by J. Charles Jensen, are two of the articles in the *Journal of History* for October, 1924.

The Cahokia Mounds is the title of the *University of Illinois Bulletin*, dated October, 1923. This is in two parts: *A Report of Progress*, by Warren K. Moorehead, and *Some Geological Aspects*, by Morris M. Leighton.

The Stege Mounds at Richmond, California, a monograph by Llewellyn L. Loud, is a recent contribution to the *University of California Publications in American Archaeology and Ethnology*. *Nabaloï Tales*, by C. R. Moss, is another number in this series.

The Department of Archaeology, Phillips Academy, has recently issued a volume on *An Introduction to the Study of Southwestern Archaeology*, by Alfred Vincent Kidder. This work contains numerous plates and maps.

El Palacio for September 30, 1924, contains an account of the Santa Fe Fiesta held on September 1-3, 1924. This fiesta was under the direction of The School of American Research. The issue for November 15th contains a letter from Edgar L. Hewett under the title *Present Status of Pueblos*.

The American-Scandinavian Foundation has recently published a volume entitled *America of the Fifties: Letters of Fredrika Bremer*. This is a selection of the letters printed in 1863 under the title *Homes of the New World; Impressions of America*. Miss Bremer visited the United States in 1849 and 1851 and it was in her honor that Bremer County, Iowa, received its name.

The Wisconsin Magazine for August-September, 1924, contains an account of the parade of the Wisconsin Civil War veterans at Janesville on June 18, 1924. This number also contains *Some Indian Memories*, by Victor Kutchin; and *Madeline and the Past*, by Helen Patten. The issue for October contains an article on *Historic Spots in Modern Green Bay*, by Marion McDermand; *Wisconsin's Log Cabin Lady*, by Ruth Norcross Hoxie; *Early History of Stevens Point*, by Bertha Glennon; and *How Our Ancestors Settled in Wisconsin*, by Charles Linton Curtis.

IOWANA

"Harry" Wallace; 1866-1924 is the title of the tribute to Henry Wallace in *The Alumnus of Iowa State College* for December, 1924.

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Pioneer Physicians, by D. S. Fairchild, is an article on Iowa history in *The Journal of the Iowa State Medical Society* for October 10, 1924.

Driving Cattle from Texas to Iowa, 1866, a diary by George C. Duffield with an introduction by W. W. Baldwin, appears as the first paper in the April number of the *Annals of Iowa*. *Thomas Gregg, Local Historian and Author*, by David C. Mott; *Rarest Stone Lilies*, by Charles Rollin Keyes; chapter seven of *The Writings of Judge George G. Wright*; and *Battle of Blue Mills*, by Charles P. Brown, are other contributions in this number.

SOME RECENT PUBLICATIONS BY IOWA AUTHORS

Aldrich, Bess Streeter,

Mother Mason. New York: D. C. Appleton and Co. 1924.

Aurner, Clarence Ray,

Some Early Educational Leaders in Iowa (The Iowa Journal of History and Politics, October, 1924).

Babbitt, Charles H.,

With the Flying Artillery (The Palimpsest, December, 1924).

Baldwin, Bird T.,

Child Development in Iowa (Bulletin of Iowa State Institutions, April, 1924).

Betts, George Herbert,

The Curriculum of Religious Education. New York: Abingdon Press. 1924.

Bose, Sudhindra,

Presidential Election in the United States (The Modern Review, Calcutta, October, 1924).

Briggs, John Ely,

Iowa in the Beginning (The Palimpsest, October, 1924).

Buckmaster, Richard Price,

Who is the Receiver of Stolen Furs (The American Furrier, October, 1924).

Butler, Ellis Parker,

Green Paint (The Saturday Evening Post, July 19, 1924).

Jiffy Jones and the Alligator. Boston: Houghton Mifflin Co.
1924.

Butler, J. B.,

Child Placing in Families (Bulletin of Iowa State Institutions,
April, 1924).

Carver, Thomas Nixon,

The Economy of Human Energy. New York: Macmillan Co.
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Clark, Florence L.,

Red Wing Way with the Movies (American City, August,
1924).

Deich, Charles, (Joint author)

A Study of Distinguished High-School Pupils in Iowa. Wash-
ington: Government Printing Office. 1924.

Donovan, Josephine Barry,

A Stranger on the Prairie (The Iowa Magazine, October,
1924).

Doran, O. T., (Joint author)

Factors Affecting Public School Teachers' Salaries in Iowa.
Iowa City: The State University of Iowa. 1924.

Dunagan, W. M.,

Black Hills Opened to Tourists (The Iowa Engineer, Novem-
ber, 1924).

Eddy, Helen M.,

Course of Study in French for High Schools. Iowa City: The
State University of Iowa. 1924.

Eriksson, Erik McKinley,

The Honey War (The Palimpsest, September, 1924).

The Vanishing Voter (The New Republic, October 15, 1924).

Fairchild, D. S.,

Physicians Who Located in Iowa in the Period Between 1850

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and 1860 — Dr. Martin H. Calins (Reprinted from The Journal of the Iowa State Medical Society, April, 1922).

Farr, Clifford H.,

Doctrine or Theory — Which? (The Atlantic Monthly, November, 1924).

Ferber, Edna, (Joint author)

My Story That I Like Best. New York: International Magazine Co. 1924.

Field, Julia,

Arne (Iowa Literary Magazine, October, 1924).

Foerste, August F.,

New Echinoderms from the Maquoketa Beds of Fayette County, Iowa (Iowa Geological Survey, Vol. XXIX).

Frederick, John Towner,

Handbook of Short Story Writing. New York: Alfred A. Knopf. 1924.

Gallaher, Ruth Augusta,

The Iowa Banner (The Palimpsest, October, 1924).

Songs of Iowa (The Palimpsest, October, 1924).

Germane, Charles E.,

How to Study (School and Community, November, 1924).

Gilfillan, S. Columb,

European Political Boundaries (Reprinted from the Political Science Quarterly, September, 1924).

Gode, Marguerite,

Fairy Town Fables (Junior Home Magazine, October, 1924).

Gould, Charles Bruce,

Wells of Correct Thought (American Mercury, October, 1924).

Grahame, Orville Francis,

The First Iowa School (The Palimpsest, November, 1924).

Grahame, Pauline Patton,

Off-stage (Iowa Literary Magazine, October, 1924).

Greene, Harry A.,

Factors Affecting Public School Teachers' Salaries in Iowa.

Iowa City: The State University of Iowa. 1924.

A School Building Program for Indianola, Iowa. Iowa City:

The State University of Iowa. 1924.

Hanchett, Ray M.,

Training Future Citizens (Bulletin of Iowa State Institutions, April, 1924).

Haynes, Fred Emory,

La Follette and La Folletteism (The Atlantic Monthly, October, 1924).

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Hilliard, George Horatio,

Probable Types of Difficulties Underlying Low Scores in Comprehension Tests. Iowa City: The State University of Iowa. 1924.

Hornaday, William Temple,

Critical Situation of American Game (Playground, July, 1924).

Tales from Nature's Wonderlands. New York: Scribner's Sons. 1924.

Howell, Jesse V.,

Petroleum and Natural Gas in Iowa (Iowa Geological Survey, Vol. XXIX).

Hrbkova, Sarka,

Czechoslovak Settlers (The Interpreter, November, 1924).

Hueston, Ethel Powelson, (Mrs. E. J. Best)

Coasting Down East. New York: Dodd, Mead and Co. 1924.

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Hurt, H. W.,

The College Blue Book. Chicago: Published by the author. 1924.

Hutchinson, Eleanor,

The Menace of Morphine, Heroin and Cocaine (Bulletin of Iowa State Institutions, April, 1924).

Ingersoll, Tyrrell M.,

The Pig (Iowa Literary Magazine, October, 1924).

Kantor, MacKinlay,

The Road to Millerstown (Elks Magazine, October, 1924).

Keyes, Charles Rollin,

Rarest Stone Lilies (Annals of Iowa, April, 1924).

Knipe, Emilie Benson, and Alden Arthur,

Powder, Patches and Patty. New York: Century Co. 1924.

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The Presentation of Simple Latin Plays in High Schools (The Classical Journal, October, 1924).

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Mineral Production in Iowa in 1919 and 1920 (Iowa Geological Survey, Vol. XXIX).

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Lowden, Frank O.,

The State's Business (Independent Woman, October and November, 1924).

Lucas, Henry Stephen,

The Beginnings of Dutch Immigration to Iowa, 1845-1847 (The Iowa Journal of History and Politics, October, 1924).

Mahan, Bruce E.,

At the Opera House (The Palimpsest, November, 1924).

Explorations of Iowa (The Palimpsest, October, 1924).

Iowa at the Centennial (The Palimpsest, September, 1924).

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Middaugh, Ruth B.,
James Branch Cabell: Romancer (Iowa Literary Magazine, October, 1924).

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Thomas Gregg, Local Historian and Author (Annals of Iowa, April, 1924).

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The Pronunciation of Iowa (The Palimpsest, October, 1924).

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The Quiet Shore (Iowa Literary Magazine, October, 1924).

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Best Sermons of 1924. New York: Harcourt, Brace & Company. 1924.

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Introduction to Philosophy. Boston: Houghton Mifflin Co. 1924.

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The Value of Health (Bulletin of Iowa State Institutions, April, 1924).

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The History Inquiry (The Historical Outlook, October, 1924).

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The Miniatures of the Ellesmere Chaucer (Philological Quarterly, October, 1924).

Plum, Harry Grant,
The Correlation of English and American History in the American History Course. Iowa City: The State University of Iowa. 1924.

Porter, Kirk Harold, (Compiler)
National Party Platforms. New York: Macmillan Co. 1924.

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Recent Developments in Branch Banking (The American Economic Review, September, 1924).

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The Invisible Woman. Indianapolis: Bobbs-Merrill Co. 1924.

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Indians of Iowa (The Palimpsest, October, 1924).

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Note on the Average Numbers of Brothers and of Sisters of the Boys in Families of n Children (Science, July 11, 1924).

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Henry Clay Dean (The Palimpsest, September, 1924).

Ross, Edward Alsworth,

Roads to Social Peace. Chapel Hill, N. C.: University of North Carolina Press. 1924.

Russell, Frances Theresa,

Gold and Alloy (University of North Carolina Studies in Philology, July, 1924).

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Rocks of Iowa and Illinois (American Journal of Science, November, 1924).

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Political Corruption as an American Institution (The World Tomorrow, October, 1924).

The Vanishing Voter (The New Republic, October 15, 1924).

Schoewe, Walter H.,

The Origin and History of Extinct Lake Calvin (Iowa Geological Survey, Vol. XXIX).

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The Effect of the War on German Higher Education (The Transit, October, 1924).

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The Naming of Iowa (The Palimpsest, October, 1924).

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Two Sonnets (The Midland, November, 1924).

Sigmund, Jay G.,

Blinkers (The Midland, November, 1924).

To a Killdeer Plover (Sports Afield, October, 1924).

Retired (The Midland, September, 1924).

Slocum, Arthur Ware, (Joint author)

New Echinoderms from the Maquoketa Beds of Fayette County, Iowa (Iowa Geological Survey, Vol. XXIX).

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A Remarkable Fossil Echinoderm Fauna in the East Indies (The Journal of American Science, October, 1924).

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Some of the Fundamentals of Character Education (School and Society, July 26, 1924).

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How to Buy and Use Limestone (Bulletin of Iowa State Institutions, April, 1924).

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An American Girl Sees Austria (People's Popular Monthly, October, 1924).

A Start in Life (American Mercury, September, 1924).

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Tilton, John L.,

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Two Women and Hog-Back Ridge (The Midland, June, July, August, 1924).

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The Great Seals of Iowa (The Palimpsest, October, 1924).

Van Vechten, Carl,

The Tattooed Countess. New York: Alfred A. Knopf. 1924.

Wade, Martin J.,

"Down With the Constitution!" Davenport, Iowa: American Citizen Publishing Company. 1924.

Wallace, Warren L.,

Direct Primary Little Used in County Elections in Iowa (National Municipal Review, December, 1924).

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Children's Teeth. Iowa City: The State University of Iowa. 1924.

Ward, Duren J. H.,

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Science: Its Meaning and Goal. Denver: Up the Divide Publishing Co. 1924.

Wheeler, Ruth, (Joint author)

Nutrition Department of the State University of Iowa (Journal of Home Economics, July, 1924).

Whitcomb, G. H.,

Early Educational Interests of Worth County, Iowa. Published by the author. 1924.

Whiting, P. W.,

A Study of Hereditary and Environmental Factors Deter-

mining a Variable Character. Iowa City: The State University of Iowa. 1924.

Wilson, Eric,

Olympic Impressions (The Iowa Alumnus, September 29, 1924).

SOME RECENT HISTORICAL ITEMS IN IOWA NEWSPAPERS

Gravel pit yields Indian bones, in the *Britt News-Tribune*, June 18, 1924.

Activities of the Howard County Historical Society at the county fair, in the *Cresco Plain Dealer*, August 29, 1924.

Some incidents in the life of Mrs. Jane Kirkwood, in the *Iowa City Press-Citizen*, September 1, 1924.

Many additions made to the archaeological collection of Frank Ellis, in the *Maquoketa Sentinel*, September 2, 1924.

Life of Governor Samuel J. Kirkwood recalled at old settlers' reunion, in the *Iowa City Press-Citizen*, September 3, 1924.

Poker game decided a county seat name in Iowa, in the *Cedar Rapids Gazette*, September 3, 1924, the *Washington Journal*, the *Davenport Times*, the *Waterloo Courier*, the *Council Bluffs Nonpareil*, and the *Fort Dodge Messenger*, September 4, 1924, the *Atlantic News-Telegraph*, September 6, 1924, the *Ames Tribune*, September 8, 1924, the *Chariton Leader*, September 9, 1924, and the *Muscatine Journal*, September 12, 1924.

Sketch of the life of Henry Morris, a ninety-six year old pioneer, in the *Lineville Tribune*, September 4, 1924.

Some experiences in camp, field, and hospital during the Civil War, by Charles N. Edwards, in the *Burlington Saturday Evening Post*, September 6, 13, 20, 27, October 4, 11, 18, 25, and November 8, 1924.

Organization of the Wyoming Historical Society, in the *Cedar Rapids Republican*, September 7, 1924, the *Monticello Express* and the *Anamosa Eureka*, September 11, 1924.

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Sketch of the career of N. C. Hansen, a Danish pioneer in Iowa, in the *Atlantic News-Telegraph*, September 8, 1924.

Reminiscences of the Mormon Trace, in the *Chariton Leader*, September 9, 1924.

Activities of the Worth County Historical Society, in the *Northwood Anchor*, September 10, 1924.

Sketch of Mrs. Mary Burke, a ninety year old pioneer, in the *Cedar Rapids Gazette*, September 11, 1924.

An old log cabin, in the *Bloomfield Messenger*, September 12, 1924.

John Brown in Iowa, in the *Des Moines Capital*, September 14, 1924.

How Iowans of 1850 journeyed from Iowa to California as shown in the journal of Horace Belknap, in the *Des Moines Register*, September 14, 1924.

A covered wagon caravan through Cedar Rapids sixty years ago, in the *Cedar Rapids Republican*, September 16, 1924.

Sketch of the life of Wilson Alexander Scott who gave the site for the State Capitol, in the *Hanlontown News*, September 19, 1924.

Tablet in memory of John Brown unveiled near Springdale by the Daughters of the American Revolution, in the *Iowa City Press-Citizen*, September 26, 1924, reprinted from the *West Branch Times* in the *West Liberty Index*, October 2, 1924, and the *Washington Journal*, October 6, 1924.

Sketch of the life of John H. Wilson, Civil War veteran, in the *Cedar Rapids Republican*, September 30, 1924.

History of the Amana colony, in the *Marengo Pioneer*, October, 1924.

Sketch of the life of Sarah Ann Knapp, who lived in Iowa since 1837, in the *Des Moines Register*, October 1, 1924, and the *Keosauqua Republican*, October 16, 1924.

An old blacksmith shop at Nashua, in the *New Hampton Gazette*, October 1, 1924.

Indian relics found near Winfield, in the *Winfield Beacon*, October 2, 1924.

Indian relics found near Coppock, reprinted from the *Washington Journal* in the *Brighton Enterprise*, October 2, 1924.

When mills played an important part in the new country, by Eric Corey, in the *Fairfield Ledger*, October 2, 1924.

Old settlers in Hamilton County, in the *Webster City News*, October 9, 1924.

The old stone house on Yellow River, in the *Iowa Falls Sentinel*, October 9, 1924.

Collection of Indian relics near Logan, in the *Muscatine Journal*, October 9, 1924.

Sketch of the life of John S. Taylor, pioneer wagon train scout, in the *Des Moines Register*, October 13, 1924.

Sketch of the life of John M. Hefley, veteran of the Mexican War and the Civil War, in the *Emmetsburg Democrat*, October 15, 1924.

Tablet placed on boulder to mark site of the first school in Iowa unveiled by Keokuk Chapter of the D. A. R., in the *Keokuk Gate City*, October 16, 17, 18, 20, the *Burlington Hawk-Eye* and the *Des Moines Register*, October 19, 1924.

Marking historic spots in Franklin County, in the *Hampton Recorder*, October 15, 1924, and the *Ackley World*, October 16, 1924.

Sketch of the career of Marvin Scudder, Mexican War veteran, in the *Bedford Free Press*, October 16, 1924.

Sketch of the life of Captain W. H. Needham, in the *Des Moines Capital*, October 17, 1924.

Sketch of the life of Ellis Cutting of Cedar Rapids, who charged

into "mouth of hell" with brave 600, in the *Des Moines Register*, October 19, December 8, 1924, the *Cedar Rapids Republican* and the *Cedar Rapids Gazette*, December 8, 1924.

Mrs. Samuel J. Kirkwood, in the *Greene Recorder*, October 22, 1924.

Mrs. Katy Miller, centenarian, in the *Estherville Democrat*, October 22, 1924.

Sketch of the Marshall County Historical Society, in the *Marshalltown Times-Republican*, October 23, November 17, 1924.

Early days in and around Council Bluffs, in the *Avoca Journal-Herald*, October 23, 1924.

Thrilling experiences of an Avoca pioneer, by Harry Wilkinson, in the *Avoca Journal-Herald*, October 23, 1924.

Mrs. Sarah Benton Knapp, by W. W. Baldwin, in the *Des Moines Register*, October 26, 1924.

Why Grinnell never had saloons, in the *Des Moines Register*, October 26, 1924.

Reminiscences about President U. S. Grant, in the *Tama Herald*, October 30, 1924.

Sketch of the life of Mrs. Nancy Moore, ninety-eight year old pioneer, in the *La Porte City Review*, November 6, 1924.

History of Holt Township in Taylor County, in the *Bedford Times-Republican*, November 6, 1924.

A new Lincoln story, in the *Cedar Rapids Gazette*, November 8, 1924.

Sketch of the life of Nicholas J. Schrup, in the *Dubuque Telegraph-Herald*, November 12, 1924.

Early days in Des Moines, in the *Des Moines Register*, November 14, 1924.

A Page County pioneer who voted for Winfield Scott for president in 1852, in the *Clarinda Journal*, November 20, 1924.

- The Icarians at Nauvoo, by C. P. Dadant, reprinted from the *Hamilton Press* in the *Burlington Saturday Evening Post*, November 22, 1924.
- The first steamboat on the Missouri River, in the *Burlington Saturday Evening Post*, November 22, 1924.
- When Robert Louis Stevenson crossed Iowa, in the *Des Moines Register*, November 23, 1924.
- The love letters of Governor Robert Lucas, by Enid M. Burns, in the *Daily Iowan*, November 21, 22, 23, 1924, and the *Council Bluffs Nonpareil*, November 25, 1924.
- W. G. Woodward, a judge in early Iowa, in the *Muscatine Journal*, November 28, 1924.
- A Marshall County fort, in the *Marshalltown Times-Republican*, December 2, 1924.
- Sketch of John H. Hazleton, ninety year old pioneer, in the *Cedar Rapids Gazette*, December 4, 1924.
- Sketch of the life of Mrs. L. F. Andrews, a real daughter of the American Revolution, in the *Des Moines Tribune*, December 4, 1924.
- Death of Edgar Sheldon, an Iowa pioneer, in the *Mount Ayr Journal*, December 4, 1924.
- Death of Levi D. Dickinson, father of Congressman L. J. Dickinson, in the *Algona Republican*, December 4, 1924.
- Reminiscences of Abraham Lincoln, reprinted from the *Washington Journal* in the *Mount Pleasant News*, December 4, 1924.
- Two pioneer papers, in the *Alta Advertiser*, December 4, 1924.
- Sketch of the life of William A. Rogers, boyhood friend of Buffalo Bill at Le Claire, Iowa, by Clint Parkhurst, in the *Davenport Democrat and Leader*, December 4, 1924.
- Letters from an Iowa emigrant, I. P. W. Snyder, who went to California in the days of the gold rush, by Enid M. Burns, in the *Daily Iowan*, December 4, 5, 9, 10, 11, 1924.

HISTORICAL SOCIETIES

PUBLICATIONS

Writings on American History, 1921, compiled by Grace Gardner Griffin, has recently appeared as a supplement to the *Annual Report of the American Historical Association* for 1921.

Indian Implements Found in Rhode Island, by H. M. Chapin, and *The Memoranda of William Green*, by Henry S. Fraser, are two of the papers in the *Rhode Island Historical Society Collections* for October, 1924.

Among the articles in the September, 1924, issue of the *Maryland Historical Magazine* is one by Bernard C. Steiner on *General John Spear Smith: First President of the Maryland Historical Society*.

The *Quarterly Bulletin of the Wyoming State Historical Department* for November 1, 1924, contains a number of short papers, among which are the following: *George W. T. Beck*, by Margaret Hayden; *Diary of A. B. Ostrander*; and *Handling the Mail at Fort Reno, D. T., in 1866 and 1867*, by A. B. Ostrander.

Volume XVI of the *Illinois Historical Collections* and the third volume in what is called the *British Series* is *Trade and Politics, 1767-1769*. This is a series of documents edited by Clarence Walworth Alvord and Clarence Edwin Carter. Many of these documents relate to the business affairs of the firm of Baynton, Wharnton, and Morgan and the activities of their agent George Morgan among the British officials in the Illinois country.

Interurban Railroads of Indiana, by Glen A. Blackburn; *History of Spiritualism in Indiana*, by Anna Stockinger; *Ripples of the Blackhawk War in Northern Indiana*, by Ella Lonn; and *Early Vevay*, by Perret Dufour, are four articles in the *Indiana Magazine of History* for September, 1924.

The *Minnesota History Bulletin* for August-November, 1922, issued in October, 1924, contains the following articles: *When Minnesota Was a Pawn of International Politics*, by Clarence W. Alvord; *The State Historical Convention at Duluth*, by Theodore C. Blegen; and *The Diary of Martin McLeod*, by Grace Lee Nute.

The Sylvan Steamboats on the East River New York to Harlem, by A. J. Wall, and *The Centennial of General Lafayette's Visit to America in 1824 and the Action of the New-York Historical Society on that Occasion* are two papers in *The New-York Historical Society Quarterly Bulletin* for October, 1924.

Camp Merritt, Its History and Monument, by William M. Johnson; *Origin and Sketch of the "Jersey Blues"*, by William H. Benedict; and a continuation of *Zion, St. Paul and Other Early Lutheran Churches in Central New Jersey*, by John C. Honeyman, are three contributions in the *Proceedings of the New Jersey Historical Society* for October, 1924.

Echoes of Early Hazelwood and Glenwood, by Mrs. S. Kussart; *Political Activities in Western Pennsylvania 1800-1816*, by Elizabeth McWilliams; *Pittsburgh in the Mexican War*, by Merton E. Stearns; and *The Mission and Importance of a Local Historical Magazine*, by Alfred P. James, are the four articles in the *Western Pennsylvania Historical Magazine* for October, 1924.

The October issue of *The Washington Historical Quarterly* contains five articles, as follows: *Reminiscences of Joseph H. Boyd, An Argonaut of 1857*, by William S. Lewis; *Early Efforts of Road Making*, by George H. Himes; *Oregon's Provisional Post Office*, by Walter M. Underhill; *The Oregon Mint*, by T. Elmer Strevey; and *While Idaho Was a Part of Washington*, by James E. Babb. *The Nisqually Journal*, edited by Victor J. Farrar, is continued.

Frank B. Gill is the author of an article on *Oregon's First Railway* published in *The Quarterly of the Oregon Historical Society* for September, 1924; John Tilson Ganoe contributes *The History of the Oregon and California Railroad*; and Leslie M. Scott writes of *Oregon History Writers and Their Materials*.

The Surrender of the Charter of Carolina, by Charles Christopher Crittenden; *Some Aspects of the Work of the Society of Friends for Negro Education in North Carolina*, by Emma King; and *War Camp Community Service in North Carolina* are the three papers in the October, 1924, number of *The North Carolina Historical Review*.

History of Law in Illinois, by Joseph J. Thompson; *Historic Old Shantytown*, *Father Marquette's Second Journey to Illinois*, by Joseph J. Thompson; and *The Catholic Clergy in Illinois*, by the same author, are among the papers in the October, 1924, number of the *Illinois Catholic Historical Review*.

Colonel Henry T. Van Rensselaer, Master of Millburn, by Mary L. D. Ferris; *Philip Livingston — A Tribute*, by Robert W. Anthony; *The High Dutch and the Low Dutch in New York, 1624-1924*, by Charles Maar; and *The Teaching of French in Colonial New York City*, by Robert Francis Seybolt, are four of the papers in *The Quarterly Journal of the New York State Historical Association* for October, 1924.

The September, 1924, volume of *The Georgia Historical Quarterly* contains one paper — *The French on the Savannah, 1605*, by Mary Ross — and three other contributions: *Burning of Columbia*, a description by Madame S. Sosnowski; *Letter of Gonzalo Menéndez de Canço, Governor of Florida, to Philip II of Spain, June 28, 1600*, translated by Katherine Reding; and *Journal of James A. Tait for the Year 1813*, with notes by Peter A. Brannon.

The four articles in *The American Historical Review* for October, 1924, are the following: *The Case of the Miscreant Cardinal*, by Theodore F. T. Plucknett; *Canning and the Conferences of the Four Allied Governments at Paris, 1823-1826*, by Harold Temperley; *French Opinion as a Factor in Preventing War Between France and the United States, 1795-1800*, by James A. James; and *Some Antecedents of the Dred Scott Case*, by Helen T. Catterall.

The Pennsylvania Magazine of History and Biography for October, 1924, contains an article on *Some Old Gardens of Pennsylvania*

by John W. Harshberger, one by Roy H. Akagi on *The Pennsylvania Constitution of 1838* and continuations of *The Provincial and Revolutionary History of St. Peter's Church, Philadelphia, 1753-1783*, by C. P. B. Jeffryes, and *The Second Troop Philadelphia City Cavalry*, by W. A. Newman Dorland.

Among the papers included in Volume 57 of the *Proceedings of the Massachusetts Historical Society* are the following: *The Peninsula Campaign of 1862*, by Thomas G. Frothingham; *Why Jefferson Abandoned the Presidential Speech to Congress*, by Charles Warren; *The Coureurs De Bois*, by William Bennett Munro; *Voting with Beans and Corn*, by Worthington C. Ford; *The Garfield-Blaine Tradition*, by Theodore Clarke Smith; *What Led Up to the Civil War and What Was Settled by Abraham Lincoln in That War*, by Henry S. Burrage; and *Naval Convoys*, by Gardner Weld Allen.

The Missouri Historical Review for October, 1924, contains a large number of articles or papers: *Rocheport, Missouri, An Illustration of Economic Adjustment to Environment*, by Lillie Franklin; *The Southwestern Pool*, by R. E. Riegel; *A. T. Still, Founder of Osteopathy*, by Ray G. Hulburt; *Missouri Verse and Verse-Writers*, by M. M. Brashear; *Personal Recollections of Distinguished Missourians — Uriel Wright*, by Daniel M. Grissom; *Early Days in Phelps County*, by Lucy R. B. Duncan; *The New Journalism in Missouri*, by Walter B. Stevens; and *The Followers of Duden*, by William G. Bek. W. O. L. Jewett contributes a brief account entitled *Disfranchisement Under the "Drake" Constitution*.

Colorado's Desert of Shifting Sand, by Frank C. Spencer; *Early Colorado Days*, an interview with Thomas T. Cornforth by Albert B. Sanford; *The Epic-Inspiring Rockies*, by A. J. Fynn; and *Further Archaeological Research in the Northeastern San Juan Basin of Colorado, During the Summer of 1922*, by J. A. Jeancon and Frank H. H. Roberts, are the papers which make up the September, 1924, issue of *The Colorado Magazine*. The November number contains *Spanish Expeditions Into Colorado*, a study by Alfred

Barnaby Thomas; a concluding chapter of the series by Mr. Jeancon and Mr. Roberts; *My Experiences in the First Colorado Regiment*, by R. B. Wallace; and *The Grave of Chief Ouray*, by Florence E. Whittier.

The *Michigan History Magazine* for July, 1924, contains an article on *The Automobile Industry in Michigan*. Other papers are the following: *A Table With a Story*, by Charles Holden; *Later Days in Dearborn*, by Henry A. Haigh; *Michigan as a Field for Genealogical Work*, by Annie Pollard; *The Archeology of Michigan*, by George R. Fox; *Impressions of Mackinac Island, 1837*, and *Side Lights on Early Michigan Railroads. Fifty Years of Michigan Progress*, by William W. Potter; *The Franklin Isle Royale Expedition*, by William P. F. Ferguson; *Honorable Frank A. Hooker*, by James M. Powers; *Ben King Memorial*, by Walter E. Banyon; *The Schoolcraft County Pioneer Historical Society*, by Mrs. Nettie S. Thorborg; *Historical Sketch of Germfask Township*, by D. F. Morrison; and *Impressions of Sault Ste. Marie, 1837*, are the contributions for October.

A double number of the *Journal of the Illinois State Historical Society* for April-July, 1924, contains the following papers and articles: *Great Dates and Deeds of Illinois*, an address by Frederick F. Shannon; *History of Headquarters Company, One Hundred and Forty-ninth Field Artillery, from June 30, 1917, to May 10, 1919*, by William E. Gilmore; *Professor Jonathan Baldwin Turner and the Granville Convention*, by Dean M. Inman; *Early Travel and Methods of Transportation in Illinois*, a prize essay by Alice Haven; *Some Views of President Lincoln Held by the London Times, 1861 to 1865*, by A. Curtis Wilgus; *The Founders of Quincy, Illinois — John Wood, Willard Keyes, Jeremiah Rose*, by William A. Richardson, Jr.; *Reminiscences of Rock Creek Presbyterian Church and Community*, by David M. Bone; *Some Notes on the Founders of the Presbyterian Church and the Other Pioneers of Thorn Grove*, by Edward Caldwell; *Ninian Edwards*, by W. G. Norton; and *History of Au Sable Grove Presbyterian Church*, by Mae Howell.

The Wisconsin Magazine of History for September, 1924, con-

tains the following papers and articles: *Know-Nothingism in Wisconsin*, by Joseph Schafer; *Early History of Ripon College, 1850-1864*, by Samuel M. Pedrick; *The Swedish Settlement on Pine Lake*, by Mabel V. Hansen; *The Venerable La Pointe Region* in the series *Historic Spots in Wisconsin*, by W. A. Titus; *The Story of a Wisconsin Surveyor*, by John B. Vliet; *John Wilson, A Sauk County Pioneer*, by Mrs. Mary J. Atwood; and *Sawmilling Days in Winneconne*, by Mrs. Chester W. Smith. Under the heading *Documents* there is an account of the presentation of the Mack portrait to the State Historical Society of Wisconsin, a brief story of the Norwegian settlers in North America, translated by Knut Gjerset, and *Recollections of Life in Early Wisconsin*, by Amherst Willoughby Kellogg, which is to be continued. The December, 1924, issue contains the following contributions: *James Gates Percival*, by William H. Pearson; *Copper Mining in the Early Northwest*, by Louise Phelps Kellogg; *The History of the Silo in Wisconsin*, by N. S. Fish; *Early Wisconsin Editors*, by John G. Gregory; *Wisconsin Troops at the Defense of Washington in 1861*, by Charles O. Paullin; *Aztalan: A Monument to Aboriginal Effort*, one of the series entitled *Historic Spots in Wisconsin*, by William A. Titus; and *Letitia Wall, A Wisconsin Pioneer Type*, by Joseph Schafer. Under the heading *Documents* there is the first installment of a *Journal of a World War Veteran*, by Ira Lee Peterson, and a third chapter of *Recollections of Life in Early Wisconsin*, by Amherst Willoughby Kellogg.

ACTIVITIES

The seventy-second annual meeting of the State Historical Society of Wisconsin was held at Madison on October 16, 1924. The most important business transacted was the election of curators.

The *Proceedings of the Nineteenth Annual Conference of Historical Societies* has been issued in pamphlet form by the secretary, Joseph Schafer. This meeting was at Columbus, Ohio, on December 29, 1923.

The Oregon Historical Society has issued a souvenir pamphlet compiled by George H. Himes, commemorating the eighty-first

anniversary of the organization of the first American civil government west of the Rocky Mountains at Champoege on May 2, 1843.

The Historical Society of Marshall County has secured a room in the courthouse to be used as a museum and this is to be open every Saturday afternoon in charge of Mrs. Annie Sellers, the curator. Albert Beane is the president of this society which was organized in 1908.

The Historical Society of Montana has issued its biennial report for the years 1923 and 1924. This Society was created as a private corporation by the legislature in 1864-1865 and was taken over by the State in 1893. J. H. T. Ryman is president of the Board of Trustees and David Hilger is the librarian.

The Wyoming Historical Society, Jones County, was organized on September 4, 1924. Mrs. Mary Calkins Chassell was elected president; John Morse, Mrs. Clara Leach Stephenson, Frank J. Tasker, and Eugene M. Babcock were chosen vice presidents; Mrs. Kate Franks Bronson, recording secretary; Mrs. May Johnson Peck, corresponding secretary; and Miss Emma Alden, treasurer.

The Howard County Historical Society is holding regular meetings on the second Monday evening of each month. At the September meeting Mrs. Alma Glass, a daughter of Judge J. G. Upton, the first county judge of Howard County, gave a paper on pioneer conditions. At the October meeting Joseph Odren, who came to Howard County in 1854, gave an account of some of his experiences and Ada G. Barker read a paper on "The Then and Now".

The thirty-ninth annual meeting of the American Historical Association was held at Richmond, Virginia, on December 27-31, 1924. A joint meeting with the Mississippi Valley Historical Association was arranged for December 30th. A subscription dinner for the Mississippi Valley Historical Association was held on the 29th of December at The Jefferson Hotel. On Wednesday, December 31st, excursions were made to Williamsburg and Yorktown.

THE STATE HISTORICAL SOCIETY OF IOWA

On Thursday night, November 20, 1924, Mr. Bruce E. Mahan, Associate Editor of the State Historical Society, gave an address

before the Marshall County Historical Society at Marshalltown on *Pageantry in Early Iowa History*.

The State Historical Society of Iowa has acquired a card calendar of maps prepared by Earl G. Swem, now librarian at William and Mary College. This calendar contains a total of 1256 cards and furnishes a list of some 675 general maps of Iowa, about 400 county maps, and 60 maps relating to cities and towns.

On Friday night, December 12, 1924, Dr. Benjamin F. Shambaugh, Superintendent of the State Historical Society, addressed the Wapello Club at Ottumwa on the subject *The Making of a Book of History*. On the same occasion Mr. Bruce E. Mahan spoke before the Ottumwa High School on *The Discovery of Iowa*.

An interesting contribution received recently by the State Historical Society is a large bound volume containing some twenty-four hundred envelopes in use during the Civil War. Many of these are elaborately decorated with pictures, scenes, and slogans and both the North and South are represented. The collection was made by S. E. Paine in 1866 and donated to the society by his daughters.

Mr. and Mrs. Robert Lucas of Iowa City have presented to the State Historical Society a portfolio used by Robert Lucas, first Governor of the Territory of Iowa, some of his letters, and his Letter Book which contains the executive journal kept during his governorship, and miscellaneous writings of his late years such as poems, acrostics, and religious views.

The following persons have recently been elected to membership in the Society: Mr. Geo. A. Heald, Spencer, Iowa; Mrs. A. H. Hoffman, Des Moines, Iowa; Mr. F. J. Howe, Muscatine, Iowa; Mr. A. J. Magnus, Muscatine, Iowa; Miss Bessie L. Pierce, Iowa City, Iowa; Mr. Carl Wittke, Iowa City, Iowa; Mrs. H. Fostina Ankeny, Orient, Iowa; Miss Elizabeth Annis, Lone Rock, Iowa; Mr. Geo. M. Ball, Iowa City, Iowa; Mr. Willis J. Bell, Mt. Pleasant, Iowa; Mr. W. W. Blasier, Jesup, Iowa; Mr. F. Bosch, Pella, Iowa; Mrs. A. G. Briggs, Grundy Center, Iowa; Mr. Kermit B. Carr, Winterset, Iowa; Mrs. Geo. W. Chaney, Newell, Iowa; Mr. John L. Cherny,

Independence, Iowa; Mr. Loran A. Clark, Council Bluffs, Iowa; Mr. Conrad E. Claussen, Holstein, Iowa; Mr. C. G. Cole, Greeley, Iowa; Mr. Herbert C. Cook, Iowa City, Iowa; Mrs. Frank B. Davis, Manson, Iowa; Mr. Leo Dolphin, Cascade, Iowa; Mrs. L. S. Dorchester, Clear Lake, Iowa; Mr. Ed Fackler, Jr., Corning, Iowa; Mr. Herbert Garretson, Salem, Iowa; Mrs. T. J. George, Monticello, Iowa; Mrs. Noah W. Gibson, Fontanelle, Iowa; Mr. J. W. Haggard, Algona, Iowa; Miss Vera Hartley, Salem, Iowa; Miss Edith L. Hoxie, Hampton, Iowa; Mrs. Edna Barrett Jackson, Cedar Rapids, Iowa; Miss Dora Jensen, Spencer, Iowa; Mr. R. Y. Kerr, Grinnell, Iowa; Mr. L. E. Linnan, Algona, Iowa; Mr. Jack M. Logan, Eagle Grove, Iowa; Mr. C. McCracken, Centerville, Iowa; Mr. Oliver L. Olson, Lovilia, Iowa; Mr. Frank S. Payne, Centerville, Iowa; Miss Emily A. Reeve, Hampton, Iowa; Mr. L. V. Russell, Adel, Iowa; Mr. E. A. Sager, Waverly, Iowa; Miss Gertrude Schroeder, Pomeroy, Iowa; Mr. T. C. Sherman, Algona, Iowa; Miss Mary E. Shipp, Buffalo Center, Iowa; Mr. W. H. Simons, Sidney, Iowa; Mr. H. H. Toman, Cherokee, Iowa; Mr. E. J. Van Ness, Algona, Iowa; Mr. Harry W. Voltmer, Iowa City, Iowa; Mr. Thomas A. Ware, Blockton, Iowa; Mr. R. C. Williams, Jesup, Iowa; Miss Mary P. Caldwell, Jesup, Iowa; Mrs. M. U. Chesire, Marshalltown, Iowa; Mr. H. W. Chittenden, Burlington, Iowa; Dr. C. S. Foster, Newton, Iowa; Mr. E. L. Graham, Muscatine, Iowa; Mr. R. S. Grossman, Marshalltown, Iowa; Mr. Tim J. Harrington, Keokuk, Iowa; Miss Alma J. Kellum, Mt. Pleasant, Iowa; Miss Harriet Knuth, Holstein, Iowa; Mr. Sebastian Lake, Sac City, Iowa; Mr. P. C. Lapham, New Hampton, Iowa; Mr. Raymond Loran, Washington, D. C.; Mr. O. P. Morton, Clarion, Iowa; Mr. B. F. Paul, Blairstown, Iowa; Mrs. Charles E. Perkins, Burlington, Iowa; Mrs. Jessie R. Price, Fort Dodge, Iowa; Mr. M. L. Redfield, Iowa City, Iowa; Mr. Robt. L. Roach, Muscatine, Iowa; Mr. George H. Rogers, Chicago, Illinois; Mr. Ozro N. Ross, Orange City, Iowa; Dr. C. J. Snitkay, Belle Plaine, Iowa; Mr. A. P. Speers, Centerville, Iowa; Mrs. Clara Denny Taylor, Sac City, Iowa; and Mr. Jos. W. Wadsworth, Algona, Iowa.

NOTES AND COMMENT

Business and professional men of Osage have donated one hundred dollars to be given as prizes in an historical oration contest in the Osage high school.

The Iowa Library Association met at Boone on October 1-3, 1924. Papers and addresses were given by Mrs. A. J. Barkley, Fannie R. Buchanan, Dallas Lore Sharp, Rafel Emmanuel, Frances Mason, Frances Hannum, Dudley Crafts Watson, Emily V. D. Miller, and Eva Cloud Taylor.

Victor J. Farrar, who for ten years has been Research Assistant and Research Instructor in the University of Washington and a contributing editor of *The Washington Historical Quarterly*, has returned to the University of Wisconsin to complete his work for the degree of Doctor of Philosophy.

On October 18, 1924, the Keokuk Chapter of the American Revolution dedicated a bronze marker on a boulder marking the site where Berryman Jennings taught the first school in Iowa during the fall of 1830. A deed to the site was presented to the State Historical Society.

On September 17, 1924, just sixty-three years after their first engagement in the Civil War, a bronze tablet containing the names of the members of Company F, Third Iowa Volunteer Infantry, was unveiled at Fayette. Two members of the company, J. J. Earle and Franklin Dewey, were present at the dedication. Only two other members of the company, Franklin Downs and John D. Dooley, are now living.

Wallace's Farmer has announced a prize essay contest in the field of local history. There will be two classes of competitors — children under twelve, and boys and girls between twelve and nineteen years of age. First prizes in both classes are twenty-five dollars, second prizes, ten dollars, five dollars for the third, three for

the fourth, two for the fifth and sixth and one dollar each for the next three in rank. The contest closed December 15, 1924.

A boulder bearing a bronze tablet has recently been placed near the house on the old Maxon farm where John Brown left his party during the winter of 1857-1858. The marker is the gift of the Daughters of the American Revolution and was dedicated on September 23, 1924. Addresses were given by Mrs. Clarence H. Van Epps, Mrs. Howard Phelps, Mrs. W. L. Corrough, and Mrs. Amy Gilbert. Willard Maxon, a son of the man who was host to John Brown and his party, was present at the ceremony.

Charles H. Ashworth recently donated to the city of Des Moines a tract of sixty-five acres of land to be used as a park. According to the conditions of the gift, which is valued at \$200,000, this park is to be named Ashworth Park in honor of the pioneer family of the donor and within two years the city is to construct a swimming pool there. This land has been owned by the Ashworth family since 1851 when Richard Ashworth and his family, including Charles H. Ashworth, a young son, came to the junction of the Des Moines and Raccoon rivers and purchased some three hundred acres of land. For the eighty acres which included the park site, Mr. Ashworth paid five hundred dollars.

WARREN GARST

Warren Garst, who died at Des Moines on October 5, 1924, was born on December 4, 1850, at Dayton, Ohio. He came to Iowa in 1869 and settled in Boone where he went into business. Mr. Garst was a member of the State Senate from 1894 to 1906 inclusive and was the first Industrial Commissioner of Iowa. In November, 1906, he was elected Lieutenant Governor, becoming Governor on November 24, 1908, when A. B. Cummins resigned. After serving for the remainder of the term Mr. Garst withdrew from active politics, his last work along public lines being in support of the non-partisan movement for the League of Nations.

HENRY C. WALLACE

Henry C. Wallace, Secretary of Agriculture of the United States, died in Washington, D. C., October 25, 1924. He was born in

Rock Island on May 11, 1866, the first child of Henry Wallace, the "Uncle Henry" of *Wallaces' Farmer*. The boyhood days of Henry C. Wallace were spent on a farm near Winterset, Iowa, to which place his father had moved in 1876. He attended the Winterset public school, meantime working in a local newspaper office. He continued at newspaper work for several years, and then entered the College of Agriculture and Mechanic Arts at Ames in 1885. At the close of his second year in college he married and settled down on one of his father's farms near Winterset. In 1892 he again entered the college at Ames, completing two years work in one. For two years thereafter he served on the faculty as assistant professor of agriculture, and then entered upon his career as an agricultural journalist with his father. From 1894 until his death his primary interest was the advancement of agriculture. He was the close friend of James Wilson of Tama, Iowa, Secretary of Agriculture under Presidents McKinley, Roosevelt, and Taft. Henry C. Wallace accepted the position of Secretary of Agriculture in the Harding cabinet, and continued in the portfolio under President Coolidge. In this capacity he was able to put into application in a larger field the ideas he had long advocated in *Wallaces' Farmer*.

CONTRIBUTORS

IVAN LESTER POLLOCK, Assistant Professor of Political Science at the State University of Iowa. Born in Jefferson County, Iowa, in 1887. Graduated from Parsons College in 1910. Received the degree of M. A. from Washington University, St. Louis, in 1911, and the Ph. D. degree from the State University of Iowa in 1916. Author of *Some Abuses Connected with Statute Law-making* and *History of Economic Legislation in Iowa*.

JACOB ARMSTRONG SWISHER, Research Assistant in the State Historical Society of Iowa. (See THE IOWA JOURNAL OF HISTORY AND POLITICS for January, 1924, p. 160.)

JACOB VAN EK, Instructor in Political Science at the State University of Iowa. Received the Ph. D. degree from the State University of Iowa in 1924. Author of *The Legislation of the Fortieth General Assembly of Iowa* and other articles. (See also THE IOWA JOURNAL OF HISTORY AND POLITICS for October, 1923, p. 708.)

CARL HERMAN ERBE, Research Assistant in the State Historical Society of Iowa. (See THE IOWA JOURNAL OF HISTORY AND POLITICS for April, 1924, p. 319.)

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LOCATED AT IOWA CITY IOWA

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THE BEGINNINGS OF EDUCATION IN IOWA

The pioneers who crossed the Mississippi River to acquire and establish homes in the land then attached to the Territory of Michigan believed in education. They desired it as a heritage for their children. Their belief and their desire, seeking concrete expression, have made Iowa the least illiterate of the States of the Union.

In those first years of settlement, as most neighborhood groups were too small to support schools, children who received instruction at all received it at home, usually from father or mother. In some families at an hour set apart on every Sunday for the purpose, in other families on the long winter evenings by the dancing lights of open fireplaces or the mild flame of tallow dips, they were taught their letters, reading, spelling, writing, figures, and the processes of arithmetic that were used in the barter and exchange of their simple life. It was a narrow training, but it served their immediate needs.

With the assembling of a community of such numbers as to warrant the effort, parents with like aspirations for their children would establish a school. It was held, as fit the case, in the home of the teacher, in the spare room of a settler, or in a separate building erected at their own cost and by their own labor. It was sustained by those who partook of its privileges. It was the product, perhaps the pride, of local sentiment. For the school laws in force there was little or no regard, so unsuited were they to the conditions of that time and place.

From these crude beginnings slowly and steadily developed, with decrease in poverty and increase in wealth, a

system in which the schools are maintained by a general tax, and are open and free to all children of proper age and character.

These same pioneers were no more content for their children to stop on the threshold of knowledge than they themselves were to continue living in round log cabins. Private schools, with courses including something more than elementary branches, appeared here and there, but did not satisfy the craving for a broader culture. To open the doors to higher education, the members from the Iowa District in the Second Legislative Assembly of the Territory of Wisconsin, which convened in Burlington on November 6, 1837, and adjourned on January 20, 1838, secured for their people the incorporation of nine "seminaries of learning for the instruction of both sexes in science and literature." One year later the First Legislative Assembly of the Territory of Iowa, which had been established on July 4, 1838, renewed all but one of these enactments and added five more. This is the list: The Wapello Seminary at Wapello, The Fort Madison Academy at Fort Madison, The West Point Academy at West Point, The Burlington Academy at Burlington, The Union Academy of Des Moines County in town sixty-nine, range three west, The Augusta Academy at Augusta, The Farmington Academy at Farmington, The Bentonsport Academy at North or South Bentonsport as a majority of the citizens of said towns may decide and agree, The Rockingham Academy at Rockingham, The Keosauqua Academy at Keosauqua, The Du Buque Academy at Du Buque, The Julian Du Buque Academy in township eighty-nine, range one east of the fifth principal meridian, and The Davenport Academy at Davenport. The rapid influx of settlers building up new communities, also lacking and also wanting educational opportunities, succeeding legislative assemblies incorpo-

rated for them seminaries, colleges, academies, universities, lyceums, institutes, and associations, all having as a primary end the advancement of learning. Although imposing lists of trustees indicate sincerity and earnestness of purpose, it seems probable that in the end these were too often paper institutions born of nothing more substantial than hopes. A legislative fiat alone, like faith without works, is dead.

In educational development, Jefferson County and Fairfield were typical and representative of Iowa counties and Iowa towns.

One of the first settlers within the bounds of Jefferson County was David Coop. He died in the spring of 1837, only a few months after his arrival. In his will he states: "It is further my will and desire that each of my infant heirs receive a common country education." Henry Rowe, another settler, who died a year later, in his will states: "It is my desire that my beloved wife should keep my children together in raising them and that they should have a common English education." In such terms did these two men, unlettered, each attesting the solemn instrument with a mark, express their last earthly wish. If what they sought looks small to any, let the difficulty of obtaining it be remembered.

On January 16, 1840, the Jefferson County commissioners granted lot No. 7 in block No. 18 of the town of Fairfield to "sundry citizens" on condition that "the petitioners give a note to the board for \$20.00 payable the 10th of September next." The grant was not retained, the condition probably being too burdensome. On March 7th, "the trustees of Fairfield School District returned the lot formerly granted by the board for a school lot: whereupon it was ordered that said trustees may build a schoolhouse outside of the town plat." Evidently nothing came of this, or of an order on

August 6, 1842, "that one lot north of the street running east from Ratliff's corner on the outside of the town be sold for \$5.00 to build a schoolhouse on." A more generous spirit prevailed later. On August 21, 1843, lot No. 5 in block No. 30 in the New Plat was donated to the trustees of the town of Fairfield and their successors in office "especially for school purposes." On this was built the first schoolhouse. School, however, did not wait upon a building, but was opened in 1841 by Miss Clarissa Sawyer of Denmark in an upper room of Restoration House, a tavern and sanitarium conducted by Dr. Jeremiah S. Waugh.

An act of the Third Legislative Assembly of the Territory of Iowa, approved by Governor Robert Lucas on December 31, 1840, established the Fairfield Lyceum, "a seminary of learning for the instruction of youth of both sexes in arts, science and literature." Its funds, privileges, and immunities could be used for no purpose except education. Its incorporators were Samuel Shuffleton, Jeremiah S. Waugh, E. B. Fitch, Charles D. Jones, Henry Temple, James F. Rice, Richard Irwin, William M. Lyons, Charles E. Emery, L. W. Sanders, David Laughery, J. L. Scott, J. F. Chambers, J. P. Cheek, C. W. David, G. M. Fox, and T. G. H. Gray. As late as February, 1849, it or an organization of the same name was holding regular meetings in the Hall of the Sons of Temperance. It was no doubt the inspiration of the literary societies of the following decade to which the leading citizens of the town belonged and in which they discussed questions exciting public interest. Among the questions of 1857, 1858, and 1859 were: Resolved, That Moral Suasion without the aid of Legal Coercion is inadequate as a means of Temperance Reformation; Resolved, That the best interests of the United States demand the immediate and unconditional

acquisition of the Island of Cuba; Resolved, That woman should enjoy the same political and social rights with man; Resolved, That the Constitution of the United States has failed to accomplish the design for which it was framed, and therefore should be abolished; and Resolved, That the signs of the time indicate the downfall of despotism in Europe. Two of these propositions, it will be noted, have received popular approval, and another one is very like an issue argued in a recent presidential campaign.

THE FAIRFIELD FEMALE SEMINARY

In 1848, Rev. Lancelot Graham Bell, the pastor of the Presbyterian Church of Fairfield, proposed the establishment of a Female Seminary. Action followed hard upon the proposal. With unhesitating faith in the undertaking he assumed its financial obligations and set about the erection of a suitable building. This was a two-storied brick containing fourteen rooms and was noticeable on account of the dormer-windows which broke the continuity of its roof. It stood just without the town on the southwest near the center of grounds comprising five acres of which the present boundaries are Adams Street on the north, Fourth Street on the east, Madison Street on the south, and Sixth Street on the west.

The character and spirit of the institution is clearly set out in an introductory announcement. "The Seminary will have from the beginning two general divisions — the preparatory and the higher department — each conducted in its appropriate room. Provision will therefore be made for all classes of female pupils. In the preparatory department special reference will be had to prepare for the higher. . . . Teachers will always be employed adequate to its wants. The government will be parental and kind, yet decisive. Pupils from a distance will be

required to board in the Seminary unless in special cases otherwise allowed. The comfort, protection, manners, moral and religious interests of the pupils will be carefully promoted. To render the benefits of education at this Seminary available to as many as possible, and thereby to extend its usefulness, board, including light and fire in sleeping rooms together with washing, will be put at \$35.00 per session of 21 weeks. The tuition fee will be moderate."

The Seminary opened on Monday, June 18, 1849, for a short session of four months, with twenty students in attendance, more entering during the week. From this point the record becomes fragmentary, the local chronicles containing only an occasional reference to the school. In the fall of 1851, the teachers engaged were Mrs. A. Adams, who gave lessons on the piano, Miss Condit, Miss Perkins, and Miss Weir. The subjects taught included Arithmetic, Algebra, Chemistry, Geography, Rhetoric, Grammar, Physiology, Geography of the Heavens, Intellectual Philosophy, Natural Philosophy, First Book of History, History of the United States, and Vocal and Instrumental Music.

Rev. Bell was succeeded as principal in the spring of 1852 by Rev. Charles H. Gates, pastor of the Congregational Church. Miss Sarah Bradford was his assistant. Instruction was offered "in all English branches usually taught in the best Seminaries and in the Latin and French languages." Particular attention was to be "given to Composition, Reading, Spelling and Defining." The school year was divided into two terms of twenty weeks each, the winter term commencing on the first Monday in November, and the summer term the first Monday in May. At the close of each term there was to be a thorough and impartial examination. Tuition was five dollars per term in the Primary Department and eight dollars per term in the

Academic Department with a dollar and fifty cents extra for each language taken. Board and furnished room, with lights in the room and in the schoolroom in the evening were thirty-five dollars per term. Lessons on the piano were eight dollars per term of ten weeks, with a charge of one dollar for use of the piano. For day scholars there was an extra charge of fifty cents for fuel during the winter. Washing was thirty cents per dozen. There was no charge for incidentals.

An account of one of the semi-annual examinations of this period is worthy of preservation. It was held on Thursday, March 23, 1854, in the Congregational Church. In the morning the Primary Department, conducted by Miss Lorinda Woods and Mrs. Charles H. Gates, was heard. "There were few visitors", writes the reporter, "but they were gratified by the deportment of the children and their promptness in replying to questions." In the afternoon there was an increase in the number of visitors. The advanced classes under Miss Bradford were examined. Their recitations in Arithmetic, Algebra, Geometry, Rhetoric, and Latin "were characterized by a readiness and perfection that exhibited thorough discipline in the teaching and studying of these branches." In the evening, in the presence of a crowded house, twenty-one young ladies read original compositions and contended for two prizes, offered by Judge Charles Negus. The judges were C. W. Slagle, S. Clinton, and J. F. Wilson. The first prize was awarded to Miss Smock of Birmingham, whose subject was "Rachel Weeping for Her Children", and the second to Miss Woods of Oskaloosa for an "Ode to Sleep". "All the young ladies", said the reporter, "acquitted themselves creditably and reflected honor upon their preceptors and the institution." A colloquy for the occasion, written by Miss Woods, was then presented. The characters —

Prudence, Propriety, Curious, Tardy, Busybody, Indolence, Fashion, Polly, and Granny — “were admirably delineated both in the style of expression of the sentiments contained and the manner of rehearsing them.” Margaret Shriner and Mary Henn of the Primary Department were next crowned, each by one of her classmates with a tastefully arranged wreath of flowers as a reward for superior diligence and correct deportment. Songs varied the exercises. In conclusion Mr. J. H. D. Street of Ottumwa and Judge Negus made appropriate remarks, congratulating Fairfield upon having such an institution, exhorting the young women to renewed efforts to obtain knowledge and felicitating the teachers upon the result of their labors.

In the fall of 1854, Rev. Lyman B. Crittenden, who came well recommended, assumed the charge and direction of the Seminary. To awaken and develop interest in the school, Rev. S. C. McCune, the Presbyterian pastor, Rev. John Harris, the Methodist pastor, Rev. Charles H. Gates, the Congregational pastor, Rev. D. V. Smock, the Presbyterian pastor at Birmingham, Dr. J. M. Shaffer, a physician, L. F. Boerstler and Captain Henry Eaton, merchants, and Charles Negus, Caleb Baldwin, C. W. Slagle, and George Acheson, lawyers well known throughout the State, “consented to be a Visiting Committee during the current Academic year.” In this capacity, these representative citizens were as truly sponsors of the institution as if they had been its legal directors. One trait they possessed in common: they were ready to join others in promoting every worthy cause that held promise of benefit to the community.

Robert S. Hughes, “an able and experienced teacher”, in the fall of 1857 took over the Seminary. He appears to have introduced some changes in policy and methods. The scholastic year was divided into “three terms of 14 weeks each,” with “a vacation of 7 weeks” following the

last term. "Boarders" were charged thirty-eight dollars per term, and this paid for "board and lights and tuition in the English branches." "Day pupils" were charged six dollars and seven dollars, the latter amount caring for the higher branches and Latin. Instruction was also provided in Embroidery, Ornamental Needlework, and Wax Work (Fruit and Flowers)". For optional studies, such as Music, German, French, and Drawing, there were extra charges varying from two dollars to twelve dollars. A separate department was installed for the instruction of children of both sexes, to which it was proposed to give extra attention. The tuition for this was four dollars.

For the opening of the winter term on Monday, November 30, 1857, this interesting announcement was given publicly: "As there will be no school in the University this winter, Mr. Hughes, at the urgent solicitation of some of our citizens, has consented to receive a limited number of young men for instruction. Their room will be separate from that of the young ladies, but the recitations will be made at the same time." This was not perfect freedom of coeducation, but it was the first long step in that direction at Fairfield.

Mr. Hughes retained the Seminary but one year. His successor was Miss Helen E. Pelletreau, "late of Xenia, Ohio". Under her administration, there was a return to the original purpose: "Females only will be admitted." She was assisted for several years by Miss Jennie Carey and after her marriage and retirement by Mrs. Fannie Seward Baylies. For some reason, she vacated the "Fairfield Female Seminary" property at the end of 1859, or soon thereafter, removing her school to a building which stood on the southeast corner of the present high school grounds. Here it continued for six years, when Miss Pelletreau leaving to take charge of a girl's school at Pittsburg, Pennsylvania, it was closed.

Rev. L. G. Bell, having again come into possession of the "Fairfield Female Seminary" property by virtue of a sheriff's deed, dated December 29, 1859, reopened the Seminary on Monday, October 2, 1860, under the supervision of his son-in-law, Rev. C. J. King, A. M., with the intention of putting it on a permanent basis. It was advertised that "the Greek and Latin Classics" would be taught and that "both male and female students" would be "embraced", though the "boarding establishment" would be "for females only". As a fruit tree that blooms profusely in a final effort to produce fruit before it dies, so this was the last and supreme effort of Mr. Bell to put on an enduring foundation the Seminary he had founded more than a decade earlier. It completed the school year and then was carried down in the sweep of his financial difficulties. He had sold the property on May 8, 1855, subject to a certain mortgage, to Lyman B. Crittenden, who in turn sold it on June 18, 1859, subject to the same lien, to Robert S. Hughes. Neither of these purchasers meeting the required payments, Mr. Bell, for self-protection, was compelled to foreclose. He, too, being unable to pay off the mortgage he had originally placed on the property, on December 24, 1861, quit-claimed it to Alexander Pattison, by whom it was turned to more prosaic uses. Thus passed the Fairfield Female Seminary.

THE FAIRFIELD UNIVERSITY

As the plans for the Fairfield Female Seminary matured, thought was taken of the need of a similar institution for young men. The *Iowa Sentinel* in its issue of January 12, 1849, reported: "In addition to Mr. Bell's school, it is now reduced almost to a certainty that there will be a college located at this place either by the state or private enterprise." This forecast was not altogether due to prevision.

The Second General Assembly was then in session. On Friday, December 22, 1848, William Baker, one of the Representatives from the county of Jefferson, introduced "H. R. file, No. 85, A Bill for an act to relocate the Iowa State University." The next day it was referred to the Committee on Public Buildings of which Mr. Baker was a member. On Saturday, January 6, 1849, the committee reported as a substitute "H. R. file, No. 139, A Bill for an act to establish at Fairfield a Branch of the State University." Being considered at once, Mark Burroughs, a representative from the county of Henry, offered an amendment to strike out "Fairfield, in Jefferson county," and insert "Mt. Pleasant, in Henry county;" "Provided, That the Trustees of the Mt. Pleasant Collegiate Institute shall convey all lands and other property belonging to the said Institute, to the State University." After this and several amendments of minor importance were voted down, the bill passed the House, was messaged to the Senate, and promptly referred to the Committee on Schools, of which John Howell, the Senator from the county of Jefferson, was a member. On Friday, January 12, Senator Howell introduced "Senate file, No. 111, An act supplemental to" the House bill. This named and constituted Barnet Ristine, Christian W. Slagle, Daniel Rider, Horace Gaylord, Bernhart Henn and Samuel J. Bayard a board of directors "to manage and direct the entire business and affairs of the Branch of the State University" located at Fairfield and prescribing their duties and powers. These bills, having passed both houses, on Monday, January 15, received the approval of Governor Ansel Briggs.

In accordance with the terms of the law, the directors met in the office of Slagle and Acheson on Monday, May 7, 1849, and organized by taking the oath of office and electing Bernhart Henn president, Christian W. Slagle secretary,

and Horace Gaylord treasurer. Mathias Grimes was "articled with" for the purchase of a twenty acre lot lying on the west of the town and south of the Agency road. Samuel J. Bayard not having qualified, Charles Negus was recommended to the Governor as a proper person to fill the vacancy.

The next several months were devoted to soliciting subscriptions and donations for the benefit of the University. William S. Scoville was appointed a special agent for this purpose.

To secure title to the land previously arranged for, the Board, on February 8, 1850, finding but one hundred and fifty dollars had been realized upon subscriptions, "contracted a loan of fifty dollars and executed their note for seventy dollars" to John A. Pitzer, "pledging their individual liabilities for the amounts." At subsequent meetings, contracts were made for the erection of a building thirty by sixty feet. For the sum of two hundred and forty-five dollars Alexander Fulton was to put in the foundation walls. For the sum of four hundred and fifty dollars, John Shuffleton was to furnish one hundred thousand brick. For laying up the brickwork, Jesse Winn was to receive one dollar and seventy-five cents per thousand brick.

Thomas H. Benton, Jr., Superintendent of Public Instruction, in his report for 1850, relating what had been done at Fairfield, says: "The plan adopted contemplates seven buildings, three in the rear and two on either side, forming a hollow square two hundred and forty by three hundred and sixty feet, with an open front. The main building is to be forty by eighty feet two stories high, the others thirty by sixty feet each and two stories. One of the smaller buildings has been erected and will be completed at an early day. The estimated cost is \$2,300. The sum of \$1,800 has

already been expended. The directors propose to employ the necessary teachers and commence the literary exercises of the institution next summer."

But "Man proposes, God disposes." Ill luck and misfortune literally rode upon the wind. On May 31, 1851, a hurricane partially wrecked the building, undoing much of what had been accomplished. With hearts undaunted, the directors again took up their task. Although by law the institution had been "placed upon the same footing in regard to funds" as the University at Iowa City, it had not received and there was no promise that it would receive aid from the State. The struggle was a losing one. At the desire of the directors, it is said, the Fourth General Assembly in January, 1853, "authorized and empowered" them "to transfer or mortgage the whole or any portion of the grounds and buildings belonging to the institution." In a financial statement of its condition published in June was a request that "the subscribers who have paid their subscriptions" call a meeting to advise what is the best course to pursue.

Following this, though the steps are not to be traced, a company was formed to take over the property. Shares were twenty-five dollars each. The capital stock was \$3000, which was afterward increased to \$10,000. On October 20, 1854, the stockholders met in the office of Charles Negus, called M. C. Shamp to the chair, made C. Baldwin secretary, and adopted Articles of Incorporation under the name and style, "Fairfield University". They then elected Bernhart Henn president of the new organization; C. Baldwin, secretary; and J. C. Ware, treasurer. These officers together with R. McElhinny, D. Young, Rev. S. C. McCune, and James Thompson, constituted the board of directors.

The board acted with celerity, the very next day issuing a statement containing in substance the following: That a

company composed of citizens of Fairfield has purchased the Branch University; that no effort will be spared to make Fairfield University one of the best institutions for young men in the west; that for Principal J. Anderson, A. B., a graduate of the Ohio University, who has had many years of experience in teaching, has been secured; that the discipline will be mild but firm; that the common English course will be arranged with reference to preparing students for teaching, and certificates of proficiency will be given to those completing it; that tuition in the Primary Department, including Reading, Writing, Orthography, Elementary Grammar, Arithmetic, and Geography, is, per session, \$6.00; that in the Preparatory Department including all the English branches commonly taught in such institutions, it is, per session, \$8.00; that in the Academical Department, including Ancient and Modern languages, it is per session \$10.00; that good board may be had in the town at \$2.00 per week; that good rooms may be had in the University Buildings (which are under the care of the Principal) for lodging and study, provided with a stove, each room to accommodate two students, at \$2.50 per student per session; that the Winter session will commence Monday, November 6, 1854; that after the present year, the Academic term will commence on the first Monday of September and close on the last Thursday of June; that terms will be divided into sessions and quarters; that the length of a session is 21 weeks, of a quarter 11 weeks; and that there will be a recess of one week at the end of each calendar year.

A catalogue issued in June, 1855, shows that the first year there were eight students in the Primary Department, forty in the Preparatory Department, and eight in the Collegiate Department. One student came from Arkansas and one each from the counties of Keokuk, Montgomery, Wayne, and Washington. The others were from Jefferson County

and Fairfield. The collegians were C. H. Boerstler, W. B. Culbertson, W. P. Dunwoody, J. B. Efner of Richland, W. C. Fulton, M. A. McCoid, E. D. Thompson, and J. M. Wood. The collegiate course was arranged as follows :

FRESHMAN YEAR

First Term

Physiology	Cutler
Virgil	Cooper
Xenophon — Anabasis & Lysias	Graeca Majora
Algebra	Ray's 2d part

Second Term

Livy	Lincoln
Xenophon — Cyropaedia	Graeca Majora
Elementary Geometry commenced	Davies Legendre
Grecian and Roman Antiquities	

SOPHOMORE YEAR

First Term

Horace — Odes	Anthon
Xenophon — Memorabilia	Graeca Majora
Elementary Geometry completed	Davies Legendre
Trigonometry, Plane & Spherical Mensuration	Davies
Surveying	Davies
Rhetoric	Blair

Second Term

Homer — Iliad or Odyssey	Owen
Cicero de Officiis or de Oratore	
Analytical Geometry	Church
Differential Calculus	Church
Natural Philosophy	Olmsted

JUNIOR YEAR

First Term

Demosthenes & Thucydides	Graeca Majora
Integral Calculus	Church
Mental Philosophy	Upham
Rhetoric	Whately
Logic	Whately
Chemistry commenced	Johnston

Second Term

Greek Tragedies	
Horace — Satires and Epistles	Anthon
Analytical Mechanics	Young
Chemistry completed	Johnston
Evidences of Christianity	Paley
Natural Theology	Paley

SENIOR YEAR

First Term

Tacitus — Histories or Germania Agricola	Tyler
Moral Philosophy	Wayland
Astronomy	Robinson
Mineralogy	Dana
Butler's Analogy	Tefft
Political Economy	Wayland

Second Term

Plato contra Atheos	Lewis
Geology	Hitchcock
International & Constitutional Law	Kent or Story
Review in Mathematics	
Review in Languages	

Throughout the year there will be a weekly recitation in the Greek Testament by the college classes.

The daily program began with calling the roll, reading a portion of the Holy Scriptures and prayer, at which exercises all students were required to be present. At the close of each session there was a public examination, and on the completion of the examination, a public exhibition. Connected with the University was the Athenian Society, an association in which students engaged in declamation, composition, and debates, and learned the proper modes of conducting business in deliberative assemblies.

The University's first year came to an end on Friday evening, June 29, 1855, with an exhibition by the Athenian Society in the Presbyterian Church. The program consisted principally of orations with vocal music by mem-

bers of the society and by a class of young girls from the Seminary. The young men were serious minded. Their themes were heavy and smack of erudition: J. W. Wood, "Progress of Science"; C. H. Boerstler, "Education"; I. N. Elliott, "Our Common Schools"; G. H. Case, "Formation of Character"; M. A. McCoid, "Power and Glory of the Creator"; I. W. Baker, an essay, "Beauties of Nature"; E. W. Wood, "Progress of Improvement"; and J. A. P. Hampson, "Popery". Rumors of the spirit of the last address had been bruited about the streets, attracting some adverse criticism. There were some who claimed it was a Know Nothing production and threatened to kick the speaker off the stand if he attempted to deliver it. Others insisted that the young man had a right to select his own subject and express his own sentiments in accordance with the great principle of freedom of speech. The contention proved to be fine advertising and brought out a crowd to hear the speech, but nothing untoward happened.

On account of this incident and perhaps for other reasons, Ward Lamson on July 12, 1855, sent the stockholders of Fairfield University a remarkable communication. After setting forth his desire for a policy of freedom of opinion and speech, he continued: "There is another object I would like to see accomplished in this school. It is that the young men of this agricultural state be taught the principles of agriculture, horticulture and floriculture, as well as the sciences now taught therein. Every graduate, whether he follows farming, mechanics, law or divinity, should know how to cultivate and fill his garden with excellent vegetables and his orchard with choice fruits, that his table may be supplied with those helpful and cheap luxuries; and he should know how to fill his yard with beautiful shrubs and flowers, that his house may be sweet home without homeliness."

He then proposed "to buy the stock and to conduct the school on the aforesaid basis; to add more ground to the domain, to place thereon a garden, nursery and orchard, and if necessary to erect a chemical laboratory for the analyzation of grain, vegetables, fruits, plants and soil, that farmers may know how to adapt crops to localities." This offer was not accepted, it was not even considered.

Professor Anderson conducted the University three years. His salary was \$450 the first year and \$500 thereafter. He was also granted the use of three rooms free of rent. In October, 1855, H. W. Austin was employed as assistant teacher "for 21 weeks at the rate of two hundred dollars per term." In October, 1856, Mrs. Anderson was permitted to assist her husband in teaching at a salary of four dollars per week, provided she was needed and spent five hours a day at the work.

For some reason not set out in their records, but influenced probably by financial considerations, the trustees were able neither to reach an agreement with Professor Anderson to continue as head of the institution nor to find a suitable successor to him. Whatever the cause, the doors of the University remained closed for a year. They were reopened on Monday, November 6, 1858, under the direction of Rev. Andrew Axline, A. B., a graduate of Capital University, Columbus, Ohio, and a licensed Lutheran minister. The faculty, in addition to the Principal, consisted of Dr. J. M. Shaffer, A. M., Lecturer on Anatomy, Physiology, and Hygiene, Miss Hattie Honn, Teacher of Instrumental Music, and Miss Sarah Cockill, Charles Younkers, and Luther Mathews, Teachers. At the beginning of the second term, in January, 1859, Miss Sue McBeth became first assistant in place of Miss Cockill, and Mr. Williams took the place of Mr. Younkers. Pupils of both sexes were admitted. Tuition was \$4.50 for common branches, \$6.00 for higher

branches exclusive of languages, \$8.00 for Latin and Greek or German, other branches included, and \$8.00 for Instrumental Music. Religious exercises at which all students were required to be present were held at 9 o'clock in the morning. Divine service, which those rooming in the University were expected to attend, was held at 9 o'clock in the evening. On the Sabbath all students were expected to attend public worship, either with the Principal or at such other place as their parents or guardians designated.

In 1860 the University faculty — Rev. A. Axline, A. M., Dr. J. M. Shaffer, A. M., Miss Brodie Steward, a graduate of Washington Female Seminary, Miss Emma White, the teacher of Music, and Luther Mathews — issued the first number of *The Family Visitor*, a publication devoted to educational interests.

The political turmoil of the times and the outbreak of the Civil War disturbed University activities just as it disturbed other activities. Before school opened in the fall of 1860, Mr. Axline was appointed Chaplain of the Second Iowa Infantry. Here was a duty more pressing than any other. He was absent a year, during which period Rev. J. H. Rhea acted as Principal with Miss McBeth as assistant.

Early in 1863, it was proposed by Mr. Axline that a new company be organized to take over the property of the University and continue the institution under the name "Fairfield College". Three hundred and fifty shares of stock were sold at ten dollars per share, providing \$3500, a sum deemed sufficient for the purpose. On June 5th, articles of incorporation were adopted. The officers consisted of C. W. Slagle, president, George Schramm, vice president, A. R. Fulton, secretary, George Stever, treasurer, David Hill, Robert McElhinny, and Thomas Ehrmann, trustees, Rev. Axline, A. M. Geiger, J. M. Whitham, J. M. Slagle, and D. P. Stubbs, the finance committee; and Rev.

S. C. McCune, Rev. D. Sprecher, Rev. A. S. Wells, J. B. Horn, and D. McCullough, the examining committee, all of whom made up the board of directors. It was required also that at least nine of the board should be members of good standing in the Evangelical Lutheran Church.

Fairfield College opened in the fall with Rev. Axline as President of the Faculty and Professor of Mental and Moral Science, Rev. A. M. Geiger as Professor of Mathematics and Natural Philosophy, Miss Susan A. Collins of Vermont as an assistant instructor, and Miss Emma White as teacher of Instrumental Music. Other instructors in succeeding years were Miss Maggie A. Payne, Miss Ellen White, Mrs. John Wells, Robert Webster, Rev. A. S. Wells, Mrs. George Stever, Wiley Jones, Miss Mary McCracken, and Miss Margaret Jeffers. It was a coeducational school.

The college prospered for a time and in 1865 paid its stockholders a five per cent dividend on their investment. The financial distress, however, which came as an aftermath of the war, proved the undoing of the corporation. In 1867, a school fund mortgage, which had not been met when due was foreclosed. Mr. Axline purchased the property at a sheriff's sale. He continued the school until April 1, 1874, when he accepted the presidency of the Southern Iowa Normal School and removed to Bloomfield. More than any other man in the history of Jefferson County perhaps, because of his long and intimate association with its young men and women as teacher, preacher, friend and counsellor, he has left his impress on the character of its people.

Fairfield College was no more, but a private school conducted by Professor R. M. Fish in 1874 and 1875 provided an opportunity to advance in higher branches beyond that afforded in the Union school. Mr. Fish was not prepossessing in appearance, but he was a lover of learning, a thorough scholar and an inspiring teacher. Several of his

pupils, R. W. Bickford, C. S. McElhinny, H. E. Woods, and Miss Laura B. Swan were among the first graduates of Parsons College, which, in 1875, succeeded and replaced the earlier institution, and offered in fuller measure opportunities and privileges of education.

The story of the efforts at Fairfield to provide an education beyond that of the common schools differed only in details from similar efforts in other localities. Almost every community had felt the divine aspiration. There was not nourishment for all and many died of financial starvation. Among those that survived and were in existence in the State at large, at the beginning of 1875, were: Amity College, College Springs; Cedar Valley Seminary, Osage; Central University, Pella; Columbia College, Dubuque; Cornell College, Mt. Vernon; Des Moines College, now Des Moines University, Des Moines; Iowa College, now Grinnell, Grinnell; Iowa State College of Agriculture and Mechanic Arts, Ames; Leander Clark College, Toledo; Lenox College, Hopkinton; Penn College, Oskaloosa; Simpson College, Indianola; St. Joseph's College, Dubuque; the State University of Iowa, Iowa City; Tabor College, Tabor; Upper Iowa University, Fayette; Wartburg College, Clinton; Iowa Wesleyan College, Mt. Pleasant; Luther College, Decorah; and Whittier College, Salem. These were the principal institutions, but there were doubtless others as for the most part they were maintained by their respective localities for the local needs.

What better evidence than this could there be of the faith of the pioneers of Iowa in the value of education?

C. J. FULTON

FATHER DE SMET AND THE POTTAWATTAMIE INDIAN MISSION

One of the earliest attempts to found a mission among the Indians of Iowa was that made among the Pottawattamies by the Jesuits¹ under the direction of the renowned missionary, Father Pierre Jean De Smet. This mission was founded in 1838 on the site of the present city of Council Bluffs. Although the mission was of comparatively short duration it is notable as an example of the heroic attempts to bring the Indians under the influence of Christian civilization. Moreover, it served as a training school where Father De Smet learned to know the Indian character — a knowledge that fitted him well for that greater work which he was later to accomplish in the far west. He left many records of his experiences at the mission; and with these as a basis it is possible to reconstruct an account of the daily life of the missionaries themselves as well as the manners, customs, legends, traditions, and mode of living of the people among whom they labored.

The Pottawattamie Indians were of Algonquin stock. The name "Pottawattamie" meant "makers of fire" and was used to designate them as an independent people who built their fires apart from other tribes.² Their first

¹ In 1833 the bishops of the Catholic Church in the United States, assembled at the Second Provincial Council of Baltimore, appealed to Rome to have the Indian missions of the United States entrusted to the Jesuits. Members of that order had had much experience in dealing with the Indians. Their mission work had gone hand in hand with French and Spanish discovery, exploration, and settlement. In fact, they often became explorers and discoverers themselves.— *Catholic Encyclopedia*, Vol. II, p. 240; Laveille's *The Life of Father De Smet*, S. J., p. 24.

² Fulton's *The Red Men of Iowa*, p. 163.

recorded habitat was in the region of the Great Lakes. They were at one time members of Pontiac's Confederacy, and in 1812 belonged to Tecumseh's Confederacy. After that date they were found in scattered groups in northern Indiana, northern Illinois, and southern Wisconsin. In a series of treaties, extending from 1829 to 1837,³ they ceded to the United States all their lands in these regions in exchange for five million acres in what is now southwestern Iowa, which had been ceded to the United States in 1829⁴ by the Sioux, Sacs and Foxes, Ioways, Otoes, and Missouris. Through errors on the part of the government agents, the Pottawattamies who were removed westward in 1835, 1836, and the early part of 1837 were first carried into the territory now comprising the northwestern part of the State of Missouri, not far from Fort Leavenworth, Kansas. These Indians, however, were removed to their own lands in Iowa in 1837, and the Council Bluffs sub-agency was established at a point about one mile above the mouth of the Platte River on the east (left) bank of the Missouri River.⁵

Although a few Pottawattamie Indians may have arrived at the site of Council Bluffs sometime in 1835 or 1836, the first arrival of which an official record appears occurred in 1837. On July 28th of that year, the steamer *Kansas* arrived at a point on the left bank of the Missouri River about fifteen or eighteen miles above the mouth of the Platte River. On board the *Kansas* were about one hundred Pottawattamie women and children, with some men who were unable to walk, all in charge of Brigadier General Henry Atkinson and Dr. Edwin James. Dr. James had just been appointed sub-agent for the Pottawattamie Indians. Other members of the tribe were escorted over-

³ *Eighteenth Annual Report of the Bureau of American Ethnology*, Pt. II, pp. 750-766.

⁴ Pickard's *Iowa Indians* in *The Iowa Historical Lectures*, 1892, p. 52.

⁵ Babbitt's *Early Days at Council Bluffs*, p. 10.

land to their new home, but the number of Pottawattamies who finally located in southwestern Iowa probably never exceeded three thousand.⁶

During the next year — 1838 — a Catholic mission was founded in their midst by two Jesuit missionaries, Fathers Pierre De Smet and Felix Verreydt. Father Verreydt, while stationed at the Kickapoo Mission in Kansas, had visited the Pottawattamies before they had removed to Iowa with the intention of establishing a mission among them but his object was not accomplished at that time. After the Pottawattamies had settled at Council Bluffs a delegation visited the Kickapoo Mission to ask that a "blackrobe" be sent to their tribe. They were doubtless assured that their request would be granted, for on January 26, 1838, Father De Smet wrote to friends in Belgium, "New priests are to be added to the Potawatomi Mission, and my Superior, Father Verhaegen, gives me hope that I will be sent." A few weeks later his hope was realized and he was appointed to establish a mission among the Pottawattamies.⁷

The story of De Smet's early life and how he became interested in the Indians is briefly as follows. Pierre Jean De Smet was born in the village of Termonde, in Belgium, in the year 1801. After completing his elementary education in the neighborhood of his home, he went to the seminary at Malines at the age of twenty. Here, as in the elementary school, he distinguished himself for his tact and his good common sense. He was also noted for his physical strength and for his skill in sports — talents that served him well in the exacting life of a missionary among the Indians of the western country. Of a fervent and sentimental character, he turned naturally to a religious career.

⁶ Babbitt's *Early Days at Council Bluffs*, pp. 26, 27, 28.

⁷ Laveille's *The Life of Father De Smet, S. J.*, pp. 79, 80.

One day there came to the seminary a missionary from America, Rev. Charles Nerinckx, who had been laboring for some years in Kentucky and had returned to Belgium in search of funds and recruits. The tales of his thrilling experiences impressed several of the young students, and six of them volunteered for the mission fields. In the group were Pierre De Smet, John B. Smédts, Joost Van Assche, John A. Elet, Felix Verreydt, and Pierre Verhaegen. Parental objection was the first difficulty that the group had to meet, but they did not allow this to deter them. De Smet had to pawn his personal belongings for the expenses of the trip. The young missionaries sailed for America in the summer of 1821, and after a journey of forty days arrived at Philadelphia. After visiting Baltimore and Washington, they entered the Jesuit novitiate at Whitemarsh, Maryland. A call soon came from the Bishop of New Orleans for more missionaries to work among the Indians from St. Louis as a center, and De Smet was among those who answered the call, for it was his ambition to work among the western Indians.

The little crowd left Whitemarsh on April 11, 1823, for Missouri. The trip was made mostly on foot until they reached the Ohio River, and there a sort of barge was procured for the slow trip down the river. On May 31st they arrived at St. Louis and almost immediately set out to establish a new novitiate at Florissant, Missouri, about fifteen miles from St. Louis. After his regular course of studies at Florissant De Smet was ordained to the priesthood on September 23, 1827. While he was still a student, he had an opportunity of learning something about the Indians, for from 1824 to 1830 he taught the children in the Indian school which the Jesuits had established near their novitiate at Florissant. The new Jesuit college, which has since become St. Louis University, was started in 1828, and

in 1830 Father De Smet became a member of its faculty. Ill health caused him to give up his work for awhile, and in 1833 he made a trip to Europe to secure more recruits for the Jesuits and funds, instruments, books, and the like for the new college. He visited his old home in Belgium for several months and travelled somewhat in the interests of his work. He started for America in 1834 with three volunteers and many supplies for the college, but he became sick in crossing the North Sea and was forced to return to Belgium. When his health permitted, he worked constantly in trying to stir up an interest in missionary work, and when he set out for America in 1837, he brought with him three more candidates for the Jesuits.⁸

While Father De Smet was in Europe delegations had come to St. Louis from the Indian tribes of the far west to ask that a "blackrobe" might be sent to labor among them. These petitioners had come in 1831, in 1835, and again in 1837. On each occasion they were told that there were no missionaries available but that one would be sent soon.⁹

In 1836, Father Charles F. Van Quickenborne, together with Father Christian Hoecken and three lay brothers, had visited the Kickapoo Indians in northern Kansas and established a mission there. But they were rather discouraged at the lack of response on the part of the Kickapoos, and were glad when a band of Pottawattamie Indians came to ask for a "blackrobe" for their tribe. This request offered an opportunity to Father De Smet, which he gladly accepted.¹⁰

Thus it came about that on May 31, 1838, Fathers De

⁸ Laveille's *The Life of Father De Smet, S. J.*, pp. 5-76; Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. I, pp. 9-18.

⁹ Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. I, pp. 19-30.

¹⁰ Laveille's *The Life of Father De Smet, S. J.*, pp. 78, 79.

Smet and Verreydt, accompanied by Brother Andrew Mazelli, landed at the site now occupied by Council Bluffs, Iowa, to begin their work among the Pottawattamies. They expected an enthusiastic reception, but the savages who, decked out in gala attire, lined up along the river bank to meet the boat seemed to take no more notice of them than they took of any other strangers. In order to pay their respects to the Pottawattamie chief, "Billy" Caldwell, Father Verreydt and Brother Mazelli set out on a trip of four miles to his camp. While they were gone Father De Smet discovered that the Indians could not even "make the sign of the cross nor say a pater or an ave."

The chief received the missionaries in a very cordial manner, and they established themselves in a log fort or blockhouse which Colonel Stephen W. Kearny had turned over for their use.¹¹ This fort or blockhouse, some twenty-four feet square, had been erected in 1837 to protect the immigrating Pottawattamies from their belligerent enemies to the north. It had been occupied for a short time by Captain D. B. Moore with Company C of the United States Dragoons who returned to Fort Leavenworth when the danger seemed no longer to threaten.¹² On this structure Father De Smet placed a cross, and immediately Father Verreydt remarked that he "beheld the devil clap his tail between his legs and take flight over the big hills." Chief Caldwell gave them the use of three cabins to which they later added a fourth — each about fourteen feet square with roofs of wooden rafters, which let in the rain, hail, and snow.¹³ Close by the chapel the missionaries laid out a

¹¹ Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. I, pp. 157-159; Cassilly's *The Old Jesuit Mission in Council Bluffs* in *The Creighton Chronicle*, February 20, 1917, Vol. VIII, pp. 265, 267.

¹² Babbitt's *Early Days at Council Bluffs*, pp. 51-54.

¹³ Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-*

cemetery.¹⁴ Within a few weeks they were able to open a school which was of great help to them in their work though it could accommodate only thirty children.¹⁵ The new church was dedicated to the Blessed Virgin and St. Joseph, and was named St. Joseph's Mission although it was also often referred to as St. Mary's.

One especially notable event at the mission was the first celebration of high mass. This took place on August 15, 1838, the Feast of the Assumption of the Blessed Virgin. Father De Smet, who probably sang the mass, gave the following description of the event: "The church where the divine service was celebrated was perhaps the poorest in the world; but twelve young neophytes, who three months before had no idea of the law of God, sang Mass in a manner truly edifying. Reverend F. Verreydt preached on devotion to the Mother of God; afterwards I gave an instruction upon the ceremonies and upon the necessity of baptism, and conferred that sacrament upon a score of adults. . . . After the Mass I blessed four marriages."¹⁶

There were at this time about two thousand Pottawattamie Indians in the vicinity, including some thirty families of French half-breeds. They lived in groups, situated from five to twenty-five miles apart. These villages were made up of several huts and tents constructed of upright poles covered with the bark of trees, buffalo hides, canvas, straw, and grass, and pitched helter-skelter

Jean De Smet, S. J., 1801-1873, Vol. I, p. 158; Cassilly's *The Old Jesuit Mission in Council Bluffs* in *The Creighton Chronicle*, February 20, 1917, Vol. VIII, pp. 268, 269.

¹⁴ Kempker's *The Catholic Church in Council Bluffs, Iowa*, p. 6.

¹⁵ Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. I, p. 164.

¹⁶ Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. I, p. 164; Cassilly's *The Old Jesuit Mission in Council Bluffs* in *The Creighton Chronicle*, February 20, 1917, Vol. VIII, p. 269.

with no regard for order or symmetry. Their lack of arrangement and their crude construction gave the villages a rather ugly appearance.¹⁷ Except his hut, almost all that an Indian possessed was a horse and a few weapons. The clothing of the men usually consisted of a colored shirt, a woolen blanket, a pair of colored leggins or gaiters, adorned with silk ribbons of various colors, and moccasins of deer-skin, decorated with beads and silk ribbons. For ornaments they often wore a bead necklace or a silver crescent, or both together. Ear-rings were worn by both sexes. Each man carried a big knife in a sheath attached to a belt. On their heads they occasionally wore a leather band in which feathers were inserted to keep their hair in place. The hair was worn very long in two braids, one falling behind, the other in front, and each braid was highly adorned with trinkets and gaudy ribbons or feathers. Their faces were painted in various colors. A young man who was capable of supporting himself as a hunter carried a calumet and a tobacco bag which contained tobacco, a small piece of steel, a firestone, and a scrap of punk.

The dress of the women was, perhaps, a bit more elaborate than that of the men. Father De Smet thus described it:

Mademoiselle "Pack-Up-and-Get," (that is her name) eldest daughter of the Prince Big Axe, wore a coiffure, when she made her appearance in the great council lodge, the principal feather of the right wing of a female goose and a *bandeau* of blue beads interlaced with small cords. Her shirt of crimson curtain cloth was fastened at the neck with a deer's foot and pizzle, and adorned with seven silver spangles, which might be worth in Belgium a franc apiece. The draperies of this garment descended gracefully to the loins, covering her blue petticoat, which hung to her knees. Her leggins or gaiters were decorated with figures, worked in

¹⁷ Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. I, pp. 15, 157, 158; Laveille's *The Life of Father De Smet, S. J.*, p. 83.

porcupine quills and embroidered with sky-blue silk. A blue bed-blanket was thrown negligently over the princess' shoulders.

Her Royal Grandeur's moccasins were adorned with little beads of assorted colors, ingeniously worked in the form of toads. She had employed a great profusion of vermilion to add to the natural pink of her complexion, while Spanish brown and Venetian red had been mingled to paint her hair where it was parted in front. This long growth, the princess' natural ornament, did not cover her shoulders, but was plaited and tied together on the back of her head, as if to display a real and positive phrenological bump.

The princess had been prodigal in her toilet of that perfume so much admired by the Indians, the essence of the skunk, the odor of which is insupportable to civilized noses, and which announced her approach to the assembly, even before her form appeared.¹⁸

The women did most of the manual labor: they washed, mended, cooked, built the cabin, cut the wood, tilled and sowed the field. They appeared old at thirty.¹⁹ The men preferred to pass their time in smoking or playing cards. Their only labor was hunting, and when necessary, war. Each fall the men banded together for the buffalo hunt. Usually they were successful in obtaining enough buffalo to supply themselves with meat and hides for some months. They hated work, and they were happy when idle. In general they had no ambition. If one aspired to better his lot or to increase his fortune by work, he became the object of general hatred and jealousy, and his possessions were quickly confiscated. Even the chief possessed no unusual rank or dignity.

On the other hand, the Pottawattamies were naturally gentle and obedient; disputes were rare, and often years passed without a quarrel, except when they got drunk, when their whole being seemed to be transformed. They

¹⁸ Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. III, pp. 999, 1000.

¹⁹ Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. III, p. 1093.

were sober more out of necessity than from virtue. They were fond of jesting, and could take a joke. They had no expression for blaspheming the name of God and their worst epithet to hurl at another was "dog".

They held many of the religious beliefs that were so commonly found among the Indians of America — belief in a Great Spirit, in some cases two Great Spirits, one good and one evil, in a Providence, in an evil spirit, in the necessity of adoration and worship, in the creation of man, in a universal deluge, in a mediator between the Great Spirit and man, and in the immortality of the soul. The ministers of their religion were medicine men, and their ceremonies consisted chiefly of songs and dances.²⁰

The missionaries saw at once that there was a tremendous amount of work ahead of them, but it was work which offered the very opportunities that they had been seeking. The Indians were not only ignorant of the truths of Christianity, but were prejudiced and superstitious, and addicted to superstitious practices. A fortnight had passed after the arrival of the missionaries among the Pottawattamies before they came across a single Catholic Indian. Of the French half-breeds only a few had been baptized, and their knowledge of religion was negligible. Polygamy was common. "They change wives as often as the gentlemen of St. Louis change their coats", wrote De Smet. Then there was the fact that they were so fond of idleness and were of such a wandering disposition that they could not be contented in any settled abode. The difficulties of the Indian language, unwritten, consisting of many dialects, not easily pronounced, and with few interpreters, made the work doubly hard.²¹

²⁰ Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. III, pp. 1062-1099.

²¹ Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. I, pp. 157, 163.

But perhaps the greatest obstacle that the missionaries had to meet was the prevalence of the liquor habit — a habit which afflicted not only the men, but also the women and children, and from time to time transformed a most peaceful community into a raging mob. The effect of this traffic is often referred to by Father De Smet. In his diary for the year 1839, the following notes occur:

May 25. Two Potawatomes killed on the Chage river in a drunken frolic.

May 27. Three Potawatomes drowned in the Missouri, supposed to be drunk.

May 28. A Potawatomie poisoned on the Mosquito while drunk. Frequently the case.

May 30. Arrival of Steamer *Wilmington* with provisions. A war of extermination appears preparing around the poor Potawatomes. Fifty large cannons have been landed, ready charged with the most murderous grape shot, each containing thirty gallons of whiskey, brandy, rum, or alcohol. The boat was not yet out of sight when the skirmishes commenced. After the fourth, fifth and sixth discharges, the confusion became great and appalling. In all directions, men, women and children were seen tottering and falling; the war-whoop, the merry Indian's song, cries, savage roarings, formed a chorus. Quarrel succeeded quarrel. Blows followed blows. The club, tomahawk, spears, butcher knives, brandished together in the air

I shuddered at the deed. A squaw offered her little boy, four years old, to the crew of the boat for a few bottles of whiskey. . .

No agent here seems to have the power to put the laws into execution.

May 31. Drinking all day. Drunkards by the dozen. Indians are selling horses, blankets, guns, their all, to have a lick at the cannon. Four dollars a bottle!

June 19. A monster in human shape a savage returning home from a night's debauch, wrested his infant son from the breast of his mother and crushed him against the post of his lodge

Aug. 19. Annuities \$90,000. Divided to the Indians. Great gala. Wonderful scrapings of traders to obtain their Indian credits.

Aug. 20. Since the day of payment, drunkards are seen and heard in all places. Liquor is rolled out to the Indians by whole barrels; sold even by the white men in the presence of the agent. Wagon loads of the abominable stuff arrive daily from the settlements, and along with it the very dregs of our white neighbors and voyagers of the mountains, drunkards, gamblers, etc. etc.²²

These extracts describe vividly not only the horrors of the traffic, but also its duration. There is scarcely a page of this diary throughout the whole summer in which there is not some mention of the traffic. "With a drunken Indian about", wrote Father De Smet, "no one is safe, and many times my own life has been in danger."²³

The missionaries were constantly trying to convince the Indians of the horrors of the traffic and were doing all in their power to stop it. Father De Smet wrote to the government on the subject in terms that could not be misunderstood, but no action was taken. The Indians themselves in a council begged the agent to prevent the poison being brought among them. Father De Smet could not find words to express his feelings in regard to the abuses connected with the liquor traffic and it was always a cause for deep regret that he was not more successful in curbing an abuse which was gradually destroying a nation among whom the most perfect harmony prevailed when they were sober.²⁴

These difficulties, however, instead of deterring the missionaries tended to increase their zeal. Their days and their weeks and their years were devoted to the task of attempting to convert these children of the plains to Christianity, instructing them in the truths of religion,

²² Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. I, pp. 172-174.

²³ Laveille's *The Life of Father De Smet, S. J.*, p. 92.

²⁴ Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. I, pp. 17, 158, 175, 184, Vol. III, p. 1088.

preparing them to receive the sacraments of life, deterring them from the cruel, fiendish excesses to which they were led by their savage nature and by unscrupulous white men, obtaining for them peace with their neighbors, educating their children, blessing their marriages, healing their sick, and burying their dead.

Their daily routine was severely monotonous. It began each morning with the offering of the Sacrifice of the Mass in their little chapel. At times they were denied even this source of consolation. Father De Smet tells how on one occasion the mission had been without supplies from Easter (March 31) until the 20th of April. On this day, news was brought that the steamer from St. Louis, containing long-needed supplies, was approaching. On their way to meet it, the missionaries were dismayed to see the vessel rapidly sinking, having struck some obstacle in the river. "Of our effects, four articles were saved: a plough, a saw, a pair of boots and some wine And the wine permits us to offer to God every day the most holy sacrifice of the mass, a privilege that had been denied us during a long time."²⁵

The most of the day was spent in the work for which they had established the mission. First of all came instruction. This was carried on both at the mission itself and in the Indian camps which were scattered about, anywhere from five to twenty-five miles apart. "We try to visit them once a week, to instruct the children and preach to the elders", appears an entry in the diary. Those who were preparing for baptism and who could attend the mission school were instructed twice a day.²⁶ In an official report on the mission

²⁵ Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. I, pp. 183, 184; Cassilly's *The Old Jesuit Mission in Council Bluffs* in *The Creighton Chronicle*, February 20, 1917, Vol. VIII, p. 269.

²⁶ Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. I, pp. 158-166.

submitted in the fall of 1840, Sub-agent Stephen Cooper wrote: "Schools, there are none here under the authority of the government. There are two Roman Catholic priests residing within my agency, of good moral character, who set a good example to the Indians and the half-breeds. They have a chapel, and school, and teacher, and have several young Indians in the school who are coming on pretty well."²⁷ During the first two and one-half months they baptized 105 persons, among them the wife of the head chief, and a boy, Logan Fontenelle, who later became chief of the Omahas and died fighting against the Sioux.²⁸

Father De Smet believed that the Indians appreciated the spiritual favors that had been brought to them, for in the evening of the day of their baptism all assembled at the home of one family "to return thanks to God for the signal benefits with which he had overwhelmed them". On another occasion he wrote: "These honest people are now over-running the country in every direction to win their near relations and acquaintances, to bring them to be instructed and enjoy the same happiness with themselves. Several Indian women . . . have dragged themselves, sick as they were, for a distance of two or three leagues, to come and ask us for baptism before they died."²⁹

The number of those admitted to instruction and to baptism continued to grow. By the fall of 1839 the missionaries were able to report a congregation of about three hundred converts, including several chiefs and their families. Forty had been admitted to receive Holy Com-

²⁷ Babbitt's *Early Days at Council Bluffs*, p. 36; *Executive Documents*, 26th Congress, 2nd Session, Vol. I, pp. 321, 322.

²⁸ Cassilly's *The Old Jesuit Mission in Council Bluffs in The Creighton Chronicle*, February 20, 1917, Vol. VIII, No. 5, p. 270; Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. I, p. 164.

²⁹ Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. I, p. 164.

munion, and it appeared to be a great happiness to them to assist at daily Mass. At this time, too, the missionaries had already blessed the marriage of twenty-three couples "who have so far", remarked Father De Smet, "remained very steady".³⁰

Much of the time of the missionaries was taken up in visiting the homes of the Indians. "I visit the Indians in their wigwams", Father De Smet wrote, "either as a missionary, if they are disposed to listen to me, or as a physician to see their sick."³¹ Apparently these visits were welcome, for John Bidwell, a western pioneer, who knew Father De Smet well, said of him: "He was a man of great kindness and great affability under all circumstances; he was of a genial and buoyant temper, fond of jest and merriment, and humorously disposed." Father De Smet once said of himself, "I am naturally inclined to laughter". He was a favorite among the Indians. In fact it was said of him: "He had but to show himself to win their hearts. There was that in his benevolent manner that commanded their trust in an instant. They delighted to honor him. He was borne in triumph or escorted with imposing ceremony; given their best lodge; feasted until endurance could receive no more." Some of his visits, however, had rather unpleasant features connected with them. He often referred to the feasts to which he was subjected — the disgusting cooking and the repulsive food — and he marvelled that human beings could live in that way. "The stomach of the Indian has always been a riddle to me", he said.³²

³⁰ Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. I, pp. 164, 177, 184; Laveille's *The Life of Father De Smet, S. J.*, p. 79.

³¹ Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. I, p. 185.

³² Bidwell's *First Emigrant Train to California in The Century*, Vol. XLI, p. 114; Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. I, pp. 108, 115, 117.

Sickness and plagues were very common among the Pottawattamies. Their careless and filthy habits of life were a favorable soil for many diseases. Often there were hundreds sick at one time, and missionaries were often called upon to act as physicians. Each day during an epidemic Father De Smet visited a new village, carrying remedies and words of encouragement to the victims. On one occasion, the chief of one of the neighboring tribes brought his boy who was at the point of death to Father De Smet for medical aid.³³

In the evenings, or whenever else he was free to do so, Father De Smet used to sit down in the midst of a group of attentive Indians and entertain them with stories. The young, and often the old, savages would listen in wide-eyed wonder as the friendly Jesuit regaled them with tales from Holy Writ—the story of creation, of the deluge, of Noah's ark, the Maccabees, Samson, Joseph and his brethren, and countless other stories from the Bible. He also told them of the heroes and the great events of American and European history, of Washington and of Napoleon, of the great cities of Europe and the vast throngs of people who lived in them.³⁴

Another work Father De Smet undertook at the mission was that of keeping a faithful record of everything worthy of note which took place there. The official records of the mission, such as records of baptisms and marriages, were kept, of course, in books especially for that purpose. In addition, he kept recorded in a journal with fidelity and accuracy many of the events that occurred during his

³³ Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. I, p. 185; Laveille's *The Life of Father De Smet, S. J.*, p. 93.

³⁴ Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. I, p. 116; Cassilly's *The Old Jesuit Mission in Council Bluffs* in *The Creighton Chronicle*, February 20, 1917, Vol. VIII, p. 268.

residence at the mission.³⁵ But the most notable collection of records dealing with events at St. Joseph's Mission are the frequent letters which Father De Smet wrote. In this collection are letters to his superiors, describing in detail the life at the mission and setting out its drawbacks and its prospects; letters to his friends and relatives in his native country, describing his charges, his joys, and his sorrows; letters to the United States government officials, complaining of the liquor traffic among the Indians; letters to his friends asking perhaps for some favor; and letters to scientists, giving a description of geological specimens or of plant life thereabouts.

The monotony of the life at the mission was relieved from time to time by visitors of all sorts — passengers who came on the river steamers, a delegation of Indians from some neighboring tribe, or perhaps the government agents to make a new treaty. The arrival of a boat always caused great excitement in the village and hundreds of Indians would line up on the shore to meet it. The steamers plied up and down the Missouri all during the summer months carrying north provisions, mail, and passengers, and taking back in exchange for the provisions hides or furs or whatever else the Indians had to offer. It was the chief means of contact between the dwellers on the prairies and the centers of civilization and commerce. The passengers often landed to converse with those on shore or to offer some article for sale or to buy some little trinkets that the Indians might have to offer. The chance to get off the boat, even for a few minutes, relieved the monotony of the long river journey.

On one occasion during his sojourn at the Pottawattamie Mission Father De Smet made a journey north to the Sioux

³⁵ Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. I, pp. 171-179.

country by steamer and by good fortune met on board Jean Nicollet, the celebrated French scientist and explorer, Charles Geyer, a German, and Lieutenant John C. Fremont of the American army, who were making a scientific excursion for the Federal government. Father De Smet had known Nicollet for some time and their delight in this meeting was mutual. As the missionary was also a scientist of considerable ability he was able to render aid to the members of the expedition.³⁶ Subsequently he made several observations and gathered many specimens of plants and minerals which he sent to Nicollet, who praised the accuracy of De Smet's work, and used it freely in the reports which he later published for the United States government.³⁷

At the beginning of each winter when the hunters had been successful, relates Father De Smet, there was a season of rejoicing in the villages of the Pottawattamies. The music, consisting of flutes and loud drums, accompanied by the monotonous songs of the Indians, continued throughout the day and night. Each family gave a feast and was very careful not to slight anyone by failing to send an invitation. Such a breach of etiquette would never be forgotten and would be quickly revenged. The food was spread lavishly and the whole village took part in the celebration.³⁸

Another work that fell to the lot of the missionary, and at which Father De Smet was singularly successful, was that of peacemaker. He described one instance of work of this kind which he undertook on behalf of the Pottawattamies. This was a trip to the Sioux Indians in dread of

³⁶ Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. I, pp. 179-182.

³⁷ Garraghan's *Father De Smet: History Maker in the Illinois Catholic Historical Review*, Vol. VI, p. 172.

³⁸ Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. III, pp. 1094, 1095.

whom the Pottawattamies had lived for two years. The Sioux received him cordially and gave a great feast in his honor. After having feasted with them, he disclosed to them the object of his visit — a lasting peace between themselves and the neighboring Pottawattamies. He discussed the points of the proposed treaty with them, refuted the false reports that had hitherto divided the two nations, and persuaded the Sioux to offer presents and smoke the calumet with the Pottawattamies.³⁹ Later Father De Smet became well known as a peace emissary of the United States government to the Indians, and in 1852 Thomas H. Benton declared that Father De Smet could do “more for their welfare and keeping them in peace and friendship with the United States than an army with banners.”⁴⁰

Sometimes delegations from other tribes came to visit the Pottawattamies. While Father De Smet was at St. Joseph's Mission some of the Sioux chiefs, with several of their warriors, came to the Pottawattamie village to smoke the calumet. The Sioux visitors displayed every mark of friendship, and gave a serenade before every wigwam and cabin in the village. At another time two Omaha chiefs, with several warriors, came to dance the calumet, or their dance of friendship. This dance, remarked the missionary, was noted more for its confusion than for its grace. The savages yelled and struck their mouths and leaped in the air, keeping time with the drums, turning and twisting in every conceivable fashion. The missionaries showed the visitors their chapel and they seemed to take a great interest in the explanation of the Crucifix, the altar, and the images showing the stations of the Cross. The chiefs invited the missionaries to visit them, and baptize their

³⁹ Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. I, pp. 189, 190.

⁴⁰ Garraghan's *Father De Smet: History Maker in the Illinois Catholic Historical Review*, Vol. VI, p. 177.

children. The missionaries gave the Indian visitors some rosaries for their children and some crosses for themselves, which they hung about their necks.

On another occasion three of the Pawnee Loup chiefs from the Platte River came to visit. They were lodged in one of the cabins of the mission, and their curiosity was excited at seeing the priests making the sign of the cross before and after meals. They invited the missionaries to visit them, and when they returned home, taught their whole village to make the sign of the cross. One of the most notable characteristics of the Pawnees was the fact that they forbade the use of liquor in their tribe, claiming that they were crazy enough without drink.⁴¹

There were many things, however, to discourage the missionaries in their work. Enthusiastic as Father De Smet was, he could not help noting the obstacles to the success of their labors. The revolting uncleanness, the idleness, the love of whisky and debauchery, the inability to grasp the abstract notions about religion, all tended to make the prospect anything but encouraging. The weakness of the Indian in the presence of temptation and the greed of the white man in presenting temptation were everywhere in evidence. The conversion of the Indians, Father De Smet concluded, was altogether a work of God.⁴²

Added to the disappointments of their ministry were the countless privations which the missionaries had to undergo. "This portion of the divine Master's vineyard", wrote Father De Smet, "requires from those who tend it, a life of crosses, privations and patience." The distance from St. Louis and the difficulties of communication were so great as to make it very hard to obtain supplies, and as a result they

⁴¹ Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. I, pp. 165-178.

⁴² Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. I, p. 18, Vol. III, p. 1076.

were sometimes without even the necessities of life. At one time their distress was extreme and they were forced to live on acorns and wild roots for more than a month.⁴³

And their comforts of life were few. "The other night, during a downpour", one of De Smet's letters ran, "I was obliged to open my umbrella to protect my face from the rain that fell on it and awakened me. My furniture consists of a cross, a small table, a bench, and a pile of books. A piece of meat, or some herbs and wild roots, washed down by a glass of fresh spring water, is about my only food." The priests spent their spare moments about the mission in chopping wood, cooking meals, and mending clothes.⁴⁴

The loneliness, too, made the missionary's lot a much harder one. "We who are at the end of the world", De Smet wrote to a brother priest, "far from friends and fellow-priests, in the midst of strangers and infidels, suffering privations, and daily witnessing revolting scenes, look forward to letters as a real treat. If you only knew the joy they bring, I am sure every one of you would give us this consolation and support, for after reading our letters we are filled with renewed zeal."⁴⁵

The wild nature of the country added to their discomforts. Wolves often came to their doors and carried off their chickens. There were snakes in abundance, and field, forest, and cabin swarmed with mice "which gnaw and devour the few fruits that we possess. . . . We live also in the midst of horse-flies and mosquitoes; they come upon us by thousands and give us no rest day nor night." During the winter months with the extreme cold and snow, and with the frozen river cutting off the chief means of

⁴³ Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. I, pp. 163, 183.

⁴⁴ Laveille's *The Life of Father De Smet, S. J.*, p. 88.

⁴⁵ Laveille's *The Life of Father De Smet, S. J.*, pp. 87, 88.

communication with other settlements, their discomfort increased.⁴⁶

There were, however, some encouraging events. On the 18th of September, 1839, two Iroquois Indians stopped at the mission. They were from the Flathead and Pierced Nose Indians, about two thousand miles to the west, and were on their way to St. Louis to ask for missionaries for their tribes. Father De Smet was much impressed with them. "By their instructions and examples", he wrote, "they have given all that nation a great desire to have themselves baptized. All that tribe strictly observe Sunday and assemble several times a week to pray and sing canticles. The sole object of these good Iroquois was to obtain a priest to come and finish what they had so happily commenced. We gave them letters of recommendation for our Reverend Father Superior at St. Louis." Father De Smet also said: "With tears in their eyes they begged me to return with them. . . . Should God deem me worthy of the honor I would willingly give my life to help these Indians."⁴⁷ Their appeal had not been in vain. Father De Smet was shortly to follow them westward — away from St. Joseph's Mission, but to a greater and more successful field of labor.

In 1840 famine threatened the mission, and on February 13th Father De Smet started for St. Louis to obtain relief. The journey was a most difficult one, over a trackless land covered with snow. He took sick on the way, but finally reached St. Louis, where he was forced to remain in bed for some time. When he had recovered and had made all preparations to return to St. Joseph's, he was told that he had been selected for a new mission far to the west among

⁴⁶ Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. I, p. 167.

⁴⁷ Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. I, pp. 29, 30.

the Flatheads. Father Hoecken was to take his place among the Pottawattamies.⁴⁸

Late in 1840 when Father De Smet was returning from this mission to the west he stopped at Fort Vermillion, where he learned that the Sioux had violated their treaty and had attacked the Pottawattamies. He reproached the Sioux for this and again made them promise to bury the hatchet. Then he moved on to his next stop—the old mission at St. Joseph's. "It would be in vain for me to attempt to tell what I felt at finding myself once more amidst our brothers", he wrote. "I had, however, the grief of observing the ravages which unprincipled men, liquor-sellers, had caused in this budding mission; drunkenness, with the invasion of the Sioux on the other hand, had finally dispersed my poor savages. While awaiting a more favorable turn of events, the good Fathers Verreydt and Hoecken busy themselves, with the care of their holy ministry among some fifty families that have the courage to resist these two enemies. I discharged my commission to them from the Sioux, and I venture to hope that in future they will be quiet in that quarter."⁴⁹

By 1841 Father Hoecken had baptized at least four hundred Indians but the mission was beginning to decline, and in September, 1841, the little band of missionaries left Council Bluffs for St. Mary's Mission, which had been established two years before at Sugar Creek for the Pottawattamies of Kansas. The last entry in the baptismal register of the Council Bluffs mission bears the date of July 17, 1841.⁵⁰

⁴⁸ Laveille's *The Life of Father De Smet, S. J.*, pp. 93-95, 102.

⁴⁹ Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. I, pp. 256-258.

⁵⁰ Kempker's *The Catholic Church in Council Bluffs, Iowa*, p. 6; Laveille's *The Life of Father De Smet, S. J.*, p. 95; Babbitt's *Early Days at Council Bluffs*, p. 57.

After the abandonment of the mission in Council Bluffs in 1841 until the arrival of the Mormons in 1846 there was no church organization represented among the Pottawattamies of this region, and the Indians were without teachers or religious instructors, except for the annual visits that Father Hoecken made to the old mission, until 1847 when the Pottawattamies were finally removed to Kansas.⁵¹

The Pottawattamie occupancy of territory in Iowa, which had continued from 1837 to 1847, was ended by a treaty drafted at Washington in 1846, and signed by the Iowa bands on June 5th of that year. By its terms the Indians relinquished their lands in Iowa for a money consideration and a tract of land, thirty miles square, in Kansas. They were to move within two years after its ratification, July 22, 1846. The removal was begun in September, 1847, and was completed by the fall of 1848.⁵²

Father De Smet made no mention of the Council Bluffs mission when he passed the place in 1842. With the exception of the old blockhouse and a few graves, no vestige of his brave endeavor to Christianize the Pottawattamies remained.⁵³ The old blockhouse, surmounted by the cross placed there by Father De Smet, was still standing in 1855. It was called the "Old Fort", or the "Old Mission" and for many years was the sole place of Catholic worship⁵⁴ in

⁵¹ Babbitt's *Early Days at Council Bluffs*, pp. 19, 20; Cassilly's *The Old Jesuit Mission in Council Bluffs* in *The Creighton Chronicle*, February 20, 1917, Vol. VIII, No. 5, pp. 271, 274.

⁵² Thwaites's *Early Western Travels, 1748-1846*, Vol. XXVII, p. 153; Babbitt's *Early Days at Council Bluffs*, pp. 39, 40.

⁵³ Brigham's *Iowa: Its History and Foremost Citizens*, Vol. I, p. 64; Chittenden and Richardson's *Life, Letters and Travels of Father Pierre-Jean De Smet, S. J., 1801-1873*, Vol. I, p. 15.

⁵⁴ Babbitt's *Early Days at Council Bluffs*, pp. 43, 45; Cassilly's *The Old Jesuit Mission in Council Bluffs* in *The Creighton Chronicle*, February 20, 1917, Vol. VIII, No. 5, pp. 268, 274.

The mission buildings and the attached graveyard were situated mainly in

Council Bluffs. It was finally torn down to make way for a dwelling.⁵⁵

Thus passed away the visible remains of one of Iowa's earliest Indian missions. But the short duration of the mission itself does not indicate that it was altogether a failure; it was one of those brave efforts which the pioneer missionary was willing to make in the face of difficulties. While the mission lasted, much good was done for the Indians spiritually, physically, and socially; but perhaps its greatest work was that it served as the training school for one of America's renowned missionaries, Pierre Jean De Smet.

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the two blocks now bounded by Broadway on the north, Voorhis Street on the south, Union Street on the east, and by Franklin Avenue and State Street on the west. The Clausen residence stands approximately on the site of the old mission church.—Cassilly's *The Old Jesuit Mission in Council Bluffs* in *The Creighton Chronicle*, February 20, 1917, Vol. VIII, No. 5, p. 265.

⁵⁵ Babbitt's *Early Days at Council Bluffs*, pp. 43, 46.

THE LEGISLATIVE DEPARTMENT AS PROVIDED BY THE CONSTITUTION OF IOWA

It is generally accepted that the most important department in any system of government is that which is concerned with the making of laws. Legislatures, however, very commonly exercise powers which are executive rather than legislative in character. Many of the American Constitutions provide that some executive powers shall be exercised only with the consent of the legislative branch, or else vest the exercise of such powers in the legislature alone. The object in such a grant of powers to the legislature has been to provide some means whereby the administration of the government might be subjected to control.

In the Constitution of the United States and the earlier State Constitutions the functions of government have been set forth as falling within three distinct groups — legislative, executive, and judicial. The object of this separation of power was to maintain a system of checks and balances as a guarantee of the rights and liberty of the individual. This is evidenced by the fact that the keynote of the various American Bills of Rights was a distrust of all grants of power.

In the Ordinance of 1787 and in the organic acts for the government of the Territories established since that time, this clear line of separation has not, however, been maintained. This may be accounted for in several ways. In the first place the Federal government exercised executive authority and control over its Territories, and the chief executive of the Territory, being selected by the central government, naturally became its agent. Secondly, the

population of the early Territories was usually so sparse that legislative assemblies were unnecessary and unwarranted. For this reason the Ordinance of 1787 provided that there should be no legislative assembly until there were at least five thousand free male inhabitants of full age in the Northwest Territory. Until this time arrived, the Governor and judges of the Territory were authorized to adopt from the laws of the original States such civil and criminal laws as would be necessary and best suited to the needs of the new Territory. Such laws, however, were always subject to disapproval by Congress and liable to change as soon as a legislative assembly was organized.¹ The relation of the Federal government to its Territories was colonial in its character, and the Governor was the true executive and ruler.²

When Iowa was formed into a separate and independent Territory it possessed a population of 22,859.³ The size of the population, which was rapidly increasing through immigration from other States, properly warranted a legislative assembly for the making of laws.

The Organic Act passed in 1838 provided that the legislative power should be vested "in the governor and a legislative assembly",⁴ and that the Legislative Assembly should be composed of two houses, the Council, or upper house, and the House of Representatives, or lower house. The Council was to consist of thirteen members chosen for a term of two years. The House of Representatives was to be made up of twenty-six members, chosen for a term of one year. The qualifications for members of both houses were the same as those prescribed for voters. According

¹ *Laws of the Territory of Iowa, 1838-1839*, pp. 25, 26.

² Shambaugh's *History of the Constitutions of Iowa*, pp. 105-112.

³ *The Iowa State Almanac and Statistical Register for 1860*, p. 26.

⁴ *Organic Act of 1838*, Sec. 4, in the *Laws of the Territory of Iowa, 1838-1839*, pp. 32, 33.

to the provisions of the Organic Act a voter must be a free, white, male citizen of the United States, twenty-one years of age, and an inhabitant of the Territory at the time of its organization. The act provided that after the first election the Legislative Assembly should prescribe the qualifications of voters.⁵ Thus, the Legislative Assembly was given the unusual power of prescribing the qualifications for its own membership. The membership of both houses was to be apportioned as nearly as possible among the several counties, so that each section of the Territory would be represented as nearly as possible according to the ratio of its population, Indians excepted. The compensation for members of either house was three dollars per day during attendance and three dollars for every twenty miles in going to and returning from a legislative session, to be estimated according to the nearest usually traveled route.⁶

Certain disqualifications for membership in the Legislative Assembly were laid down by the Organic Act of 1838. No person holding a commission or appointment "under the United States or any of its officers, except as a militia officer" could be a member of the Council or House of Representatives.⁷

Under the provisions of the Organic Act the Legislative Assembly was given extensive and unusual power. According to the provisions of this act the Legislative Assembly was granted the following powers and duties: (1) to legislate on all rightful subjects of legislation; (2) to make laws apportioning representation in the several counties to the Council and the House of Representatives according to

⁵ *Organic Act of 1838*, Sec. 5, in the *Laws of the Territory of Iowa*, 1838-1839, pp. 33, 34.

⁶ *Organic Act of 1838*, Secs. 4, 11, in the *Laws of the Territory of Iowa*, 1838-1839, pp. 32, 33, 36, 37.

⁷ *Organic Act of 1838*, Sec. 8, in the *Laws of the Territory of Iowa*, 1838-1839, p. 34.

population; (3) to make laws concerning the time, place, and manner of holding and conducting all popular elections; (4) to set by law, the date for the commencement of the annual session of the Legislative Assembly; (5) to prescribe the qualifications of voters at all elections following the first; (6) to make laws for the election of township and county officers, except judicial officers, justices of the peace, sheriffs, and clerks of the courts; (7) to approve appointments by the Governor of judicial officers, justices of the peace, sheriffs, militia officers, and civil officers not provided by the Organic Act; (8) to prescribe the time and place of meeting for the district courts of the Territory; (9) to define what should constitute the bounds of the appellate and original jurisdiction of all courts provided for by the Organic Act, and of all probate courts, and justice of the peace courts; (10) to prescribe by law the method whereby writs of error, bills of exception, and appeals in chancery causes, might be appealed from the decisions of the district court to the Supreme Court; (11) at the first session the Legislative Assembly together with the Governor was to locate and establish the seat of government which should be subject to change in the same manner that it was established; (12) the Legislative Assembly and Governor were given the authority to use the sum of \$20,000, for the purpose of erecting public buildings at the seat of the government; (13) to take an oath of office to support the Constitution of the United States and to faithfully discharge the duties of the office.⁸

The Organic Act providing a government for Iowa Territory was not, however, without limitations upon the power of the Legislative Assembly. It was not to remain in session over seventy-five days in any year and it was

⁸ The Organic Act does not specifically state that members of the Legislative Assembly shall take the oath of office, but that all civil officers before they act as such shall take the prescribed oath.

forbidden to pass laws interfering with the primary disposal of the soil, to impose a tax upon the property of the United States, or to levy a higher tax upon the land and property of non-residents than upon that of residents of the Territory. All laws made by the Governor and Legislative Assembly were subject to approval by Congress, and if disapproved by Congress were null and void. The Legislative Assembly was also prohibited from granting to justice of the peace courts the power to try cases in which the title of land was in dispute or where the sum in controversy exceeded fifty dollars, and it was not permitted to grant the right of trial by jury in cases appealed from the district court to the Supreme Court of the Territory. It could not legislate so as to deny to its citizens any of the rights, privileges, and immunities granted to the citizens of Wisconsin Territory. No member of the Legislative Assembly could hold, or be appointed to, any office created or the salary or emoluments of which were increased during the term for which he was elected to the Legislative Assembly, or for one year after the expiration of his term of office.

These prohibitions were both of a general and specific character. Although they constituted real checks and restrictions upon the legislative power of the Territory, the sphere of legislation still remained greater in its scope than that which was later granted to the State government under the Constitution of 1846.⁹

THE LEGISLATIVE DEPARTMENT AS PROVIDED BY
THE CONSTITUTION OF 1844

The Territory of Iowa had been organized but a short time when a movement for State organization was started by Robert Lucas, Governor of the Territory. This move-

⁹ Shambaugh's *History of the Constitutions of Iowa*, p. 115.

ment was somewhat checked in August, 1840, by the overwhelming defeat at the polls of the proposition to call a constitutional convention, and when the proposition was again submitted in 1842, it was again defeated by every county in the Territory. Finally, in 1844, a change of sentiment had developed, and in the April election a large majority was returned in favor of a convention to draw up a Constitution preparatory to admission to the Union.¹⁰

According to the provisions of the act of February 12, 1844, which provided for the reference to the people of the question of a constitutional convention, and the act of June 19th, amending the former, seventy-three delegates to a constitutional convention were chosen at the election in August, 1844.¹¹ The delegates so chosen assembled at the Capitol in Iowa City on October 7, 1844. The meeting was first called to order by Francis Gehon, immediately following which temporary organization was effected. Ralph P. Lowe was chosen to act as President *pro tem*, James W. Woods, Secretary *pro tem*, and Frederick M. Irish, Sergeant-at-Arms, *pro tem*. After these selections had been made, the Convention of 1844 was opened with a prayer by Rev. Snethen. The roll was then called by counties, and sixty-six of the seventy-three delegates were found to be present. The remaining delegates, except Mr. Morton of Van Buren County who was permanently

¹⁰ Shambaugh's *History of the Constitutions of Iowa*, pp. 145-174.

¹¹ Shambaugh's *History of the Constitutions of Iowa*, p. 175; Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, p. 149.

The number of delegates provided for in the amendatory act of June 19, 1844, was seventy-three, but when the Convention assembled in October, 1844, only seventy-two of the delegates appeared, Mr. Morton of Van Buren County being absent. He did not put in his appearance during the Convention, and consequently his name is not included among the signers of the Constitution of 1844. Seventy-three names, however, appear attached to this instrument. That is due to the fact that the Convention voted in George S. Hampton, the Secretary, as a member, and his name appears among those of the delegates who signed the Constitution.

absent, presented themselves during the early days of the Convention. When the roll had been called, a Committee on Credentials consisting of three members and a Committee on Rules consisting of five members were appointed. No further business having been announced the Convention adjourned until the following day.¹²

The only business of importance transacted on Tuesday was the election of permanent officers, the adoption of rules, and the consideration of a few preliminary motions. Shepherd Leffler of Des Moines County was unanimously elected President of the Convention, George S. Hampton of Iowa City technically not a member of the Convention was chosen as Secretary. The remaining officers appointed were: Alexander B. Anderson of Dubuque County, Assistant Secretary; Warren Dodd of Lee County, Sergeant-at-Arms; and Ephraim McBride of Van Buren County, Doorkeeper. Mr. Leffler in addressing the Convention after being conducted to the chair expressed the hope that the Convention in framing the Constitution would draw up such an instrument that "in all its essential provisions, be as wise and as good if not wiser and better than any other instrument which has ever yet been desired for the government of mankind".¹³

Among the rules adopted by the Convention that are important in this study are the following: rule six, which gave the President power to appoint all committees unless otherwise ordered by the Convention; rule seven, which provided that the first named member of any committee should be its chairman, and in case of his absence, the next

¹² *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1844*, pp. 3, 4; Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 7, 8.

¹³ *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1844*, pp. 5-9; Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, p. 8.

named and so on unless the committee by a majority vote of their number selected a different chairman; rule nine, which provided that upon the request of two members the yeas and nays should be taken; rule eleven, which provided for eleven standing committees, the number of members to serve upon each, which was to be not less than five, and the subject with which each committee was to deal; rule sixteen, which made it possible to reconsider a vote regardless of whether it was negative or affirmative; and rule seventeen, which stated that in all cases where applicable, and where not inconsistent with the standing rules, Jefferson's *Manual of Parliamentary Practice* should be the guide for the proceedings of the Convention.¹⁴

The names of the members appointed to serve upon each of the standing committees were announced by President Leffler on Wednesday morning, October 9th. The third committee provided for in the rules of the Convention was that on the Legislative Department. To this committee were appointed Ralph P. Lowe, Wm. W. Chapman, Andrew Hooten, Wm. L. Toole, J. C. Hall, Elijah Sells, and James I. Murray. The membership of this committee consisted of three lawyers, three farmers, and one farmer and merchant. The report of the Committee on the Legislative Department was made on Saturday following their appointment, and included also a report — *Of the Distribution of Powers*. As presented this report read:

1. The powers of the government of Iowa, shall be divided into three separate departments, the legislative, the executive and judicial; and no person charged with the exercise of powers properly belonging to one of those departments, shall exercise any functions appertaining to either of the others, except in the cases hereinafter expressly directed or permitted.

¹⁴ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 10-13, 15, 212-215. Additional standing committees were later added to those provided for in the rules of the Convention.

LEGISLATIVE DEPARTMENT

1. The legislative authority of this State shall be vested in a Senate and House of Representatives; which shall be designated the "General Assembly of the State of Iowa," and the style of their laws shall commence in the following manner: "Be it enacted by the General Assembly of the State of Iowa."

2. The meeting of the General Assembly shall be limited to biennial sessions, which shall commence on the first Monday in January next ensuing the election of its members, unless the Governor of the State, with the concurrence of the Lieutenant Governor, and the last Speaker of the House of Representatives, shall be of the opinion that the exigencies of the State and the public welfare demand a session in the interim, in which event the Governor may, by proclamation, call a special session of the General Assembly, at such time as he may deem advisable, and at the usual place of holding the same, designating specifically the object or objects of such call; but in no case shall there be more than one special session between the regular meetings of the Legislature, except it should be for purposes of war, to repel an invasion, or suppress an insurrection.

3. The members of the House of Representatives, shall be chosen every second year, by the qualified electors of their respective districts, on the ———, whose term of office shall continue two years from the day of the general election.

4. No person shall be eligible to a seat in the House of Representatives unless he shall have attained the age of twenty-one years, and shall be a citizen of the United States, and an inhabitant of this State, (or the Territory of which the State is composed,) two years, and shall have resided within the limits of the district in which he shall be chosen, one year next preceding his election, if the election district shall have been so long established, but if not, then within the limits of the district or districts out of which it shall have been taken, unless he shall have been absent on the public business of the United States or of the State.

5. The Senators shall be elected for the term of four years, and in the same manner, and at the same time and place of the Representatives, but shall not be eligible to a membership in the Senate unless they shall have attained the age of thirty years, and possess the qualifications of the Representatives as to residence and citizenship.

6. The number of Senators shall not be less than one-third, nor more than one-half, of the Representative body, and at the first session of the General Assembly, after this constitution takes effect, the Senators shall be divided, by lot, as equally as may be, into two classes; the seats of the Senators of the first class, shall be vacated at the expiration of the second year, so that one half shall be chosen every two years, and a rotation thereby, kept up perpetually.

7. When an additional number of Senators is added to the Senate, they shall be annexed, by lot, to one of the two classes, so as to keep them as nearly equal in number as practicable.

3. The members of the House of Representative, shall be chosen a Speaker and its other officers; and the Senate shall appoint its own officers, except the President; and each body shall judge of the qualifications, elections, and returns of its own members; but a contested election shall be determined in such manner as shall be directed by law.

9. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

10. Each house shall sit upon its own adjournments, keep a journal of its proceedings, and publish the same, determine its rules of proceedings, punish members for disorderly behavior, and with the consent of two-thirds expel a member; but not a second time for the same offence, and shall have all other powers necessary for a branch of the Legislature of a free and independent State.

11. Every member of the General Assembly shall have the liberty to dissent from, or protest against, any act or resolution which he may think injurious to the public or an individual, and have the reasons of his dissent entered on the journals, and the yeas and nays of the members of either House shall, at the desire of any two members present, be entered on the journals likewise.

12. Senators and Representatives, in all cases except for treason, felony, and a breach of the peace, shall be privileged from arrest during the session of the Legislature, and in going to, and returning from the same, allowing one day for every thirty miles such members may reside from the place at which the General Assembly is convened.

13. When vacancies occur in either house, the Governor, or the

person exercising the functions of the Governor, shall issue writs of election to fill such vacancies.

14. The doors of each house shall be open, except on such occasions as in the opinion of the house, may require secrecy.

15. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

16. Bills may originate in either house, and be amended, altered or rejected by the other, but no bill shall have the force of a law until on three several days it be read in each house, and free discussion be allowed thereon, unless in cases of urgency, three fourths of the house in which the bill shall be depending, may deem it expedient to dispense with the rule, and every bill having passed both houses, shall be signed by the Speaker and President of their respective houses, *Provided*, That all bills for raising revenue shall originate in the House of Representatives, but the Senate may reject or amend them as other bills.

17. Every bill which shall have passed the General Assembly, shall, before it become a law, be presented to the Governor, if he approve, he shall sign it, but if not, he shall return it with his objections to the house in which it shall have originated, who shall enter the same upon the journal and proceed to reconsider it; if, after such reconsideration it again pass both houses, by yeas and nays, it shall become a law notwithstanding the Governor's objections; if any bill shall not be returned within five days after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature, by adjournment, prevent the return, in which case it shall be no law.

18. No money shall be drawn from the Treasury but in consequence of appropriations made by law.

19. An accurate statement of the receipts and expenditures of the public money shall be attached to, and published with the laws at every regular session of the Legislature.

20. The House of Representatives shall have the sole power of impeaching; but all impeachments shall be tried by the Senate; when sitting for that purpose the Senators shall be upon oath or affirmation; no person shall be convicted without the concurrence of two-thirds of the members present.

21. The Governor, and all civil officers, shall be liable to impeachment for any misdemeanor in office, but judgment in such

cases shall not extend further than to removal from office and disqualification to hold any office of honor, trust, or profit under this State; but the party convicted or acquitted shall nevertheless be liable and subject to indictment, trial, and punishment according to law.

22. No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased during such term, except such offices as may be filled by elections from the people.

23. No person holding any lucrative office under the United States, this State, or any other power, shall be eligible to the General Assembly, *Provided*, That offices in the militia, to which there is attached no annual salary, or the office of justice of the peace, shall not be deemed lucrative.

24. No person who may hereafter be a collector or holder of public moneys, shall have a seat in either house of the General Assembly, or be eligible to any office of trust or profit under this State, until he shall have accounted for, and paid into the treasury all sums of which he may be accountable.

25. Each member of the General Assembly shall receive a compensation, to be fixed by law, for his services, to be paid out of the treasury of the State; but such compensation shall not exceed two dollars per day for the period of thirty days from the commencement of the session, and shall not exceed the sum of one dollar per day for the remainder of the session; when convened in extra sessions by the Governor, they shall receive such sum as shall be fixed for the first thirty days of the ordinary session; they shall also receive two dollars for every thirty miles they shall travel in going to and returning from their place of meeting, on the most usual route. The President of the Senate and the Speaker of the House of Representatives, shall receive in virtue of their offices, an additional compensation equal to one third of the per diem allowance of other members; *Provided, however*, That the members of the first Legislature, under this constitution, shall receive two dollars per day for their services during the entire session.

26. To obviate confusion and improper influences which may result from intermingling in one and the same act, such things as have no proper relation to each other; every law shall embrace but one object, and shall be expressed in the title.

27. No law of the General Assembly, of a public nature, shall have effect until the same shall be published and circulated in the several counties of this State by authority; *Provided*, That if the General Assembly shall deem any law to be passed, of pressing and immediate importance, provision may be made for the taking effect at an earlier period than herein provided, on the publication thereof in the several newspapers in the State.

28. No divorce shall be granted by the Legislature.

29. No lottery shall be authorised by this State, and no ticket in any lottery, not authorised by a law of this State, shall be bought or sold within the State.

30. Members of the General Assembly shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation. "I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of Iowa, and that I will faithfully discharge the duties of Senator (or Representative, as the case may be,) according to the best of my ability;" and members elect of the General Assembly are hereby empowered to administer to each other the said oath or affirmation.

31. Within two years after the first meeting of the General Assembly, under the Constitution, and within every subsequent term of ——— years an enumeration of all the white male inhabitants, above twenty-one years, shall be made in such manner as shall be directed by law. The number of Senators and Representatives shall, at the first regular session of the Legislature after such enumeration, be fixed by law, and apportioned among the several counties according to the number of white male inhabitants above twenty-one years of age in each, and the House of Representatives shall never be less than twenty-six nor greater than thirty-six, until the number of white male inhabitants of above twenty-one years of age shall be twenty-five thousand, and after that event at such ratio that the whole number of Representatives shall never be less than thirty-six nor exceed one hundred.¹⁵

Following the reading the report was laid aside and one hundred and fifty copies of it ordered to be printed.

¹⁵ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 14, 37-42; Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 405-410.

The committee in this report set forth the principle of the separation of powers. They wished to guarantee to the people that the legislature would confine its activities to the making of laws, the executive to the execution of laws, and the judiciary to the interpretation of laws. This part of the report dealing with the distribution of governmental powers was accepted by the Convention of 1844 without discussion and is to-day a part of the fundamental law of the Commonwealth of Iowa.

The report of the Committee on the Legislative Department was taken up for consideration by the Convention sitting as a Committee of the Whole on October 17, 1844, and a number of changes were adopted.¹⁶ However, owing to the fact that all changes adopted in Committee of the Whole were later subject to the approval of the Convention, and that each section of the committee's report had to pass three separate readings in Convention, each section will be traced individually through its various steps from the time that it was introduced until it was adopted by the Convention. Fourteen of the thirty-one sections in the original report were adopted without verbal change. These were: section one, providing for the General Assembly; section eight, dealing with the election of officers of both houses and the settling of contested elections for membership; section nine, specifying what should constitute a quorum; section ten, defining the authority of both houses; section thirteen, on vacancies; section fourteen, providing for open doors to the public except in special cases; section fifteen, on adjournments; section eighteen, on the use of public money; section nineteen, on receipts and expenditures; section twenty-three, on disqualification for membership; section twenty-four, dealing with the failure of collectors and

¹⁶ Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, p. 55.

holders of public moneys to account; section twenty-six, providing that every act of the General Assembly should embrace but one subject except in cases where they are closely related; section twenty-eight, prohibiting the legislature from granting divorces; and section thirty, relative to oath of members, which later became section thirty-one of the Article on the Legislative Department.

Section two, providing for biennial sessions and the time of meeting of the General Assembly, was amended in Committee of the Whole so as to give the Governor alone the power of calling special sessions of the legislature. The original report made it necessary for the Governor to get the consent of the Lieutenant Governor and the last Speaker of the House of Representatives. This amendment was favorably received by the Convention and adopted. Francis Gehon proposed to change the time of meeting from January to December. This same proposal had already been offered by Stephen B. Shelledy in Committee of the Whole where it was debated at considerable length and defeated. According to newspaper reports the month of January was preferred to December by the Constitution-makers in order to avoid the expense of adjournment for the holidays. Accordingly the proposal of Mr. Gehon in Convention was likewise defeated. The report of the Committee on Revision, made on October 29, 1844, recommended that the section be revised to read as follows:

The sessions of the General Assembly shall be biennial, and shall commence on the 1st Monday of January next ensuing the election of its members, unless the Governor of the State shall in the interim convene the General Assembly by proclamation.

This recommendation was later accepted, and in this form section two was finally adopted by the Convention. The change effected by the report of the Committee on Revision removed the limitation upon the power of the

Governor to call only one special session of the legislature during the time between regular legislative periods.¹⁷

The report of the Committee on the Legislative Department in providing for the election of Representatives did not specify the date on which they should be chosen. Consequently, when section three dealing with this subject was taken up in Committee of the Whole, Robert Lucas, Ex-Governor of the Territory, proposed to set the date for the general election on the first Monday in October. He objected to any proposition which would set the date as early as the first Monday in August because that was the time of harvest and would be very inconvenient for the holding of elections. October was the proper month for elections because it was a time of comparative leisure.

Gideon S. Bailey objected to having elections in October because October was the month of sickness, and a great number of the electors would be unable to cast their ballots at that time. He said that in his own county, Van Buren, the last election was held in October and that there were three hundred less votes polled at that election than the previous election which was held in August. Furthermore, he objected to October because it was seeding time.

Richard Quinton likewise objected to the holding of elections in October for the reasons stated by Mr. Bailey. In Keokuk County there had also been a diminution of votes in the last election. Being a farmer, Mr. Quinton knew that October was a busy time. The debate upon this question continued for some time, and finally it was agreed that the date for holding the general election should be set at the first Monday in October. When this question was later taken up for consideration in Convention, James Grant moved to strike out the "first Monday" and to insert in its

¹⁷ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 38, 75, 156, 190, 191; Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 55, 64.

stead the "third Tuesday", which was agreed to by a vote of forty-two to twenty-four. Somewhat later a motion was made to reconsider this vote but it failed to carry. At this time J. C. Hall proposed to amend section three by adding, "*Provided*, That the Legislature may alter the time of holding the General election, so that members of Congress elect shall have reasonable time to go to the general Congress between the time of their election and the first Monday in December following the election." This proposal, however, was rejected. No other changes were proposed to this section, and it was agreed to as first reported by the Committee except that the time for holding elections was specified.¹⁸

In Committee of the Whole section four dealing with qualifications for membership in the House of Representatives was debated at length, a difference of opinion occurring on the question as to whether there should be a residence qualification for membership in the House, and if so, what should be the proper length of the residence period? Edward Langworthy opposed a residence qualification because he had confidence in the capability of the people to decide for themselves in regard to their Representatives. Mr. Hall thought that the people would send persons to the legislature who were qualified to represent them. To place a residence qualification in the Constitution might take from them their first choice because they might desire to send a Representative who had not been in the State for two years. It was his further conviction that a person who had the right to vote should also have the right to hold office.

Ralph P. Lowe favored a residence qualification because he believed that one ought to be in the State long enough to

¹⁸ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 75, 83, 84; Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 55, 56, 64.

know something of the statutes before he attempted to represent the people in the legislature. Mr. Quinton agreed with Mr. Lowe: a man who had not been in this country six months had given him a "close tussel for a seat in the Convention." James Grant favored a residence qualification because he believed it the duty of the Convention to make rules and restrictions of this kind in order to guard the public rights. Stephen B. Hempstead then recommended that the residence qualification be changed from two years to one year. This proposal was agreed to in Committee of the Whole. Apparently further changes were made to this section in Committee of the Whole which have not been recorded, for in considering the report of this committee the records of the Convention state that the Committee of the Whole recommended that the following section be substituted for section four:

No person shall be a member of the House of Representatives who shall not have attained the age of twenty-one years, who shall not be a free white male citizen of the United States, who shall not have been an inhabitant of this State or Territory, one year next preceding his election, and who shall not at the time of his election, have an actual residence in the county or district he may be chosen to represent.¹⁹

This recommendation was adopted by the Convention with the addition of a requirement of thirty days residence in the county or district represented. No other changes were made in section four by the Convention.

In Committee of the Whole, Edward Langworthy recommended a change in section five which deals with the qualifications and terms of members of the Senate. He favored reducing the length of the term from four to two years. Mr. Lucas objected to this proposal because he

¹⁹ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, p. 76; Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 56, 57.

believed that it would destroy the principle of continuity in office. When the vote was taken upon this question it failed of adoption. Section five was amended in Convention by reducing the age qualification for membership in the Senate from thirty to twenty-five years. Somewhat later the report of the Committee on Revision recommended a change in the language of section five which did not, however, change its content or purpose.

As reported by the Committee on Revision the section now read: "Senators shall be chosen for the term of four years, at the same time and place as Representatives. They shall be twenty-five years of age, and possess the qualifications of Representatives as to residence and citizenship." In this form section five was agreed to by the Convention.²⁰

The only change made in section six providing for the number and classification of Senators was the striking out of the final clause—"and a rotation thereby, kept up perpetually." The matter of continuity or rotation was already provided for and this clause was therefore unnecessary.²¹

Section seven which provided for the distribution of Senators among the two groups whenever the number of Senators should be increased was revised by the Committee on Revision so that the first clause read, "When the number of Senators are increased", instead of "When an additional number of Senators is added to the Senate". This change which was of no consequence was agreed to without objection. The same committee recommended striking out the word "but" from the clause in section eight which read, "but a contested election shall be determined in such

²⁰ *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1844*, pp. 76, 156, 163; Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 57, 58.

²¹ *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1844*, pp. 76, 191.

manner as shall be directed by law." This unimportant change was likewise agreed to.²²

The only change made in section eleven dealing with protest of members of the General Assembly was the removal of the word "likewise" from the final clause, "at the desire of any two members present, be entered on the journals likewise." Section twelve, which provided for the privilege of members of the General Assembly of being free from arrest except in case of treason, felony, or breach of the peace during the legislative period and in going to and returning from the sessions of the legislature, was amended upon its second reading by striking from the original report of the committee the following words: "allowing one day for every thirty miles such members may reside from the place at which the General Assembly is convened."²³

Section sixteen dealing with the origin of bills as reported by the Committee on the Legislative Department was amended by the convention so that a vote of only two-thirds instead of three-fourths of the house in which the bill was being considered would be necessary to suspend the rules in order that the bill might be read more than once on the same day. The clause "and free discussion be allowed thereon" was omitted. The section was further amended by removing the final provision, which as reported by the standing committee read: "*Provided*, That all bills for raising revenue shall originate in the House of Representatives, but the Senate may reject or amend them as other bills." Thus the Convention broke away from the general custom which was that bills for raising revenue

²² *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 157, 191.

²³ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 76, 83, 192.

should originate in the most numerous house of the legislature.²⁴

In Committee of the Whole section seventeen, which provided for executive approval of bills before they became laws, caused considerable discussion. O. S. X. Peck proposed to make it more difficult for the legislature to pass bills over the executive veto by requiring a two-thirds vote for this purpose instead of only a majority which was required for the original or first passage of the bill. This change was agreed to by the Committee of the Whole. It was later agreed to in Convention by a vote of forty-nine to nineteen.²⁵

J. C. Hall strongly opposed the idea of giving the chief executive the power to veto legislation. He contended that wherever this power had been granted it had been used exclusively for partisan reasons. It was not a conservative power as it was usually considered, but destructive and oppressive, and Mr. Hall prophesied that it would some day be done away with. It was an arbitrary privilege giving to one man the right to say that an act passed by a majority of the representatives of the people should not go into effect. He was entirely opposed to the scheme and challenged any one to give good arguments supporting it.

Ex-Governor Lucas accepted the challenge. In his opinion one of the chief purposes in making the Constitution was to protect the people's rights, and the executive veto was one of the instruments that had been used for this purpose. It had been so exercised in the Republic of Rome. The framers of the Federal Constitution of the United States conferred upon the chief executive the power to veto legislative measures. This was proper, because the

²⁴ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 76, 77, 157, 192.

²⁵ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, p. 77.

executive was the only officer in the whole government "who was completely the representative of the people in their aggregate capacity." Even George Washington had vetoed bills, and this not for constitutional reasons, but for reasons of expediency. Mr. Lucas said that he thought Mr. Hall was inconsistent in that he proposed to do away with the executive veto and yet was willing to leave to the judiciary the right to supervise the legislature and be the judges of law.

Mr. Peck, who proposed to make it more difficult to pass measures over the executive veto, said that the veto was not a positive power of forbidding, "but a qualified negative to prevent hasty and ill-advised legislation". The feeling had taken strong hold upon the people of this country that there was too much legislation and the veto was a conservative power that did not absolutely forbid legislation, but suspended action. It was a democratic feature of any Constitution. He thought moreover that its exercise had been sustained by the people, and that it had served their best interests. The power might be objectionable if the Governor were to be elected for twenty years, but when his term was two years, he thought there could be no reasonable objection.

After further comments were made, the question of denying the executive the veto power was put to a vote in Committee of the Whole and defeated.²⁶

An attempt was made in the Convention to qualify the provision in regard to the executive veto by making it possible for a vetoed bill to become a law "if at the next succeeding regular session of the General Assembly, the same measure be introduced and passed by a majority of both houses . . . without requiring the Governor's con-

²⁶ Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 58-63.

currence.” Since the section already contained a provision for passing bills over the Governor’s veto the proposal referred to was defeated by a large majority. Samuel W. Bissell then proposed to strike out that portion of section seventeen relating to the passage of bills over the executive veto, and introduced the principle of referendum by proposing to add the following:

After such reconsideration both houses concurring, may direct such bill, together with the objections of the Governor, to be published in all the newspapers printed in this State, for four successive weeks, and that a vote of the qualified electors be taken for and against said bill at the next annual election; and if a majority of the votes cast be in favor of such bill, it shall become a law.

This amendment was amended so as to remove the part concerning publication in newspapers, and then when submitted to a vote it was defeated, the vote being twenty-three for and forty-one against. Ebenezer Cook now proposed to amend the section so as to limit the veto power to questions of constitutionality only. He wished to add the following limitation: “*Provided*, That the objections of the Executive of this State, as provided herein, shall not prevent the said bill from becoming a law, unless said objections are on the ground of the unconstitutionality of said proposed law.” This amendment was also defeated by an overwhelming majority.

The Committee on Revision in making its report recommended that the final phrase, “in which case it shall be no law”, should be stricken out. This recommendation was concurred in and section seventeen was adopted without further amendment.²⁷

Section twenty, on the power of impeachment, and section twenty-two, relative to the restriction of members,

²⁷ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 79, 80, 157, 163, 192.

received only minor amendments. Section twenty-one, on liability of impeachment, was amended by the Committee of the Whole so that instead of reading, "The Governor, and all civil officers, shall be liable to impeachment", it read, "The Governor, Lieutenant Governor, Secretary of State, Auditor, Treasurer, and Judges of the Supreme and District Courts, shall be liable to impeachment". At the end of the section the Committee of the Whole added, "all other civil officers shall be tried for misdemeanors in office in such manner as the General Assembly may provide."²⁸

The report of the Committee of the Whole recommended that section twenty-five, providing for the compensation of members of the General Assembly, be amended so as to extend the time for which the legislature might receive per diem compensation from thirty to fifty days. At the time this recommendation was agreed to it was also decided that the President of the Senate and the Speaker of the House of Representatives should receive no additional compensation by virtue of their offices. The clause relative to mileage allowed members was amended so as to allow two dollars for every twenty miles of travel instead of two dollars for every thirty miles as originally provided.²⁹ Section twenty-seven, in regard to the publication

²⁸ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 77, 78, 157, 163, 193.

²⁹ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 78, 82, 84, 157, 163, 193.

According to the journal of the Convention an amendment was offered to section twenty-five by Ralph P. Lowe proposing to strike out the words "male and above 21 years of age", in line ten and to insert "one hundred and twenty-five thousand" in lines ten and eleven. This proposal was agreed to by the Convention but as a matter of fact no such change was made in this section for the very good reason that the words "male and above 21 years of age" do not appear in the section referred to. The amendment of Mr. Lowe, however, referred to section thirty-one of the original report of the Committee on the Legislative Department.

of laws and the date on which they were to go into effect was partially revised by the Committee on Revision although the meaning and intent was in no wise altered. For the section which read, "That if the General Assembly shall deem any law to be passed, of pressing and immediate importance, provision may be made for the taking effect at an earlier period than herein provided, on the publication thereof in the several newspapers in the State", the Committee on Revision substituted the following: "If the General Assembly shall deem any law of immediate importance they may provide that the same shall take effect by publication in newspapers in the State." No further changes were made in this section and so in content it remained the same as originally reported.³⁰

At this point a new section was adopted by the Convention, becoming section twenty-nine. This section read: "No county or counties shall be liable for the expense of laying out or establishing any road or roads authorized by special act of the assembly."³¹ Because of this insertion it was necessary to change the numbering of all sections of the original report following. Thus, the twenty-ninth section became the thirtieth and so on.

When section twenty-nine of the original report, now section thirty, which prohibited lotteries or the sale of lottery tickets, was being considered, Stephen Hempstead proposed to strike out "and no ticket in any lottery not authorised by a law of this State, shall be bought or sold within the State", and to insert the following, "nor shall the sale of lottery tickets be allowed." Mr. Hempstead's proposed amendment was rejected by the Convention, and so far as the records of the journals show was never taken up

³⁰ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 157, 163, 194.

³¹ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 80, 81, 82, 194.

or mentioned again. Not even the report of the Committee on Revision contained any proposed or recommended changes to this section. The final draft of the Constitution, however, shows that this section was changed to read as Mr. Hempstead had proposed to have it.³²

Section thirty-one of the committee's report, providing for the census enumeration received a number of amendments both in Committee of the Whole and in the Convention. The amended section which appeared in the Constitution as section thirty-two provided for a census enumeration every four years for a period of sixteen years. This was to include all white inhabitants of the State regardless of age instead of all white male inhabitants above twenty-one years as provided in the committee's report. The amended section further provided that the number of members in the House of Representatives should never exceed thirty-nine until the number of white inhabitants in the State should be one hundred and twenty-five thousand, instead of limiting this number to thirty-six until the number of white male inhabitants above twenty-one years should be twenty-five thousand, as provided in the original report.³³

In addition to section twenty-nine, three other new sections were added to the original report of the Committee on the Legislative Department. As adopted by the Convention these sections read:

33. When a senatorial and representative district shall be composed of two or more counties, it shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a senatorial or representative district.

34. In all elections by the General Assembly the members

³² *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 88, 194.

³³ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 78, 79, 82, 157.

thereof shall vote viva voce, and the votes shall be entered on the journal.

35. For the first ten years after the organization of the government, the annual salary of the Governor shall not exceed eight hundred dollars; Secretary of State, five hundred dollars; Treasurer, three hundred dollars; Auditor, five hundred dollars; Judges of the Supreme and District Courts, each, eight hundred dollars.³⁴

Edward Langworthy proposed to add a provision which would make it mandatory upon the legislature to pass laws to prohibit blacks and mulattoes from settling in the State. This proposal, which was adopted by the Convention, read: "The Legislature shall, at as early a day as practicable, pass laws to prevent the settlement of Blacks and Mulattoes in this State." The report of the Committee on Revision, however, recommended that this provision should not be included as a part of the Article on the Legislature and the Convention later agreed to this recommendation.³⁵

In its amended form the Article on the Legislative Department passed its third reading on Wednesday morning, October 30th. As adopted by the Convention this Article read:

1. The legislative authority of this State shall be vested in a senate and house of representatives, which shall be designated the General Assembly of the State of Iowa, and the style of their laws shall commence in the following manner: "Be it enacted by the General Assembly of the State of Iowa."

2. The sessions of the General Assembly shall be biennial, and shall commence on the 1st Monday of January next ensuing the election of its members; unless the Governor of the State shall in the interim convene the General Assembly by proclamation.

3. The members of the house of representatives shall be chosen every second year, by the qualified electors of their respective

³⁴ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 82, 83, 157, 165, 194, 195.

³⁵ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 82, 157, 165.

districts, on the 3d Tuesday in October, whose term of office shall continue two years from the day of the general election.

4. No person shall be a member of the house of representatives who shall not have attained the age of twenty-one years; who shall not be a free white male citizen of the United States; who shall not have been an inhabitant of this State or Territory, one year next preceding his election, and who shall not, at the time of his election, have an actual residence of thirty-days in the county or district he may be chosen to represent.

5. Senators shall be chosen for the term of four years, at the same time and place as representatives. They shall be twenty-five years of age, and possess the qualifications of representatives as to residence and citizenship.

6. The number of Senators shall not be less than one third nor more than one half of the representative body; and at the first session of the General Assembly after this Constitution takes effect, the Senators shall be divided by lot, as equally as may be, into two classes; the seats of the Senators of the first class shall be vacated at the expiration of the second year, so that one half shall be chosen every two years.

7. When the number of senators is increased they shall be annexed by lot to one of the two classes, so as to keep them as nearly equal in number as practicable.

8. The house of representatives, when assembled, shall choose a Speaker and its other officers, and the senate shall appoint its own officers except the President; and each body shall judge of the qualifications, elections, and returns of its own members. A contested election shall be determined in such manner as shall be directed by law.

9. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties, as each house may provide.

10. Each house shall sit upon its own adjournments, keep a journal of its proceedings, and publish the same; determine its rules of proceedings, punish members for disorderly behavior, and with the consent of two-thirds, expel a member, but not a second time for the same offence; and shall have all other powers necessary for a branch of the legislature of a free and independent State.

11. Every member of the General Assembly shall have the liberty to dissent from or protest against any act or resolution which he may think injurious to the public or an individual, and have the reasons for his dissent entered on the journals; and the yeas and nays of the members of either house, on any question, shall at the desire of any two members present, be entered on the journals.

12. Senators and representatives, in all cases except for treason, felony, and breach of the peace, shall be privileged from arrest during the session of the legislature, and in going to and returning from the same.

13. When vacancies occur in either house, the Governor, or the person exercising the functions of the Governor, shall issue writs of election to fill such vacancies.

14. The doors of each house shall be open, except on such occasion as in the opinion of the house, may require secrecy.

15. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

16. Bills may originate in either house, and be amended, altered or rejected by the other; but no bill shall have the force of a law until on three several days it be read in each house, and unless, in cases of urgency, two thirds of the house in which the bill shall be depending may deem it expedient to dispense with the rules: and every bill having passed both houses, shall be signed by the Speaker and President of their respective houses.

17. Every bill which shall have passed the general assembly shall, before it become a law, be presented to the governor. If he approve, he shall sign it, but if not, he shall return it with his objections to the house in which it shall have originated, who shall enter the same upon the journal and proceed to reconsider it: if, after such reconsideration, it again pass both houses by yeas and nays, by a majority of two thirds of the members of each house present, it shall become a law notwithstanding the governor's objections. If any bill shall not be returned within five days after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislature, by adjournment prevent such return.

18. No money shall be drawn from the treasury but in consequence of appropriations made by law.

19. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws, at every regular session of the legislature.

20. The house of representatives shall have the sole power of impeachment. All impeachments shall be tried by the senate. When sitting for that purpose, the senators shall be upon oath or affirmation: no person shall be convicted without the concurrence of two-thirds of the members present.

21. The governor, lieutenant governor, secretary of state, auditor, treasurer, and judges of the Supreme and District Courts shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend farther than to removal from office, and disqualification to hold any office of honor, trust or profit, under this State; but the party convicted or acquitted shall nevertheless be liable and subject to indictment, trial and punishment, according to law. All other civil officers shall be tried for misdemeanors in office in such manner as the General Assembly may provide.

22. No senator or representative shall, during the time for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created or the emoluments of which shall have been increased, during such term; except such offices as may be filled by elections by the people.

23. No person holding any lucrative office under the United States, or this State, or any other power, shall be eligible to the general assembly: *Provided*, That officers in the militia to which there is attached no annual salary, or the office of justice of the peace, shall not be deemed lucrative.

24. No person who may hereafter be a collector or holder of public moneys shall have a seat in either house of the general assembly, or be eligible to any office of trust or profit under this State, until he shall have accounted for, and paid into the treasury, all sums for which he may be accountable.

25. Each member of the general assembly shall receive a compensation to be fixed by law, for his services, to be paid out of the treasury of the State. Such compensation shall not exceed two dollars per day for the period of fifty days from the commencement of the session, and shall not exceed the sum of one dollar per day for the remainder of the session; when convened in extra session by the governor, they shall receive such sum as shall be fixed for the

first fifty days of the ordinary session. They shall also receive two dollars for every twenty miles they shall travel, in going to and returning from their place of meeting, on the most usual route: *Provided, however,* That the members of the first Legislature under this constitution, shall receive two dollars per day for their services during the entire session.

26. To obviate confusion, and improper influences which may result from intermingling in one and the same act, such things as have no proper relation to each other, every law shall embrace but one object, which shall be expressed in the title.

27. No law of the general assembly, of a public nature, shall take effect until the same shall be published and circulated in the several counties of this State by authority: If the general assembly shall deem any law of immediate importance, they may provide that the same shall take effect by publication in newspapers in the state.

28. No divorce shall be granted by the legislature.

29. No county or counties shall be liable for the expense of laying out or establishing any road or roads authorized by special act of the assembly.

30. No lottery shall be authorized by this State, nor shall the sale of lottery tickets be allowed.

31. Members of the general assembly shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear or affirm (as the case may be) that I will support the constitution of the United States and the constitution of the State of Iowa, and that I will faithfully discharge the duties of senator (or representative as the case may be) according to the best of my ability;" and members elect of the general assembly are hereby empowered to administer to each other the said oath or affirmation.

32. Within two years after the first meeting of the General Assembly, under this constitution, and within every subsequent term of four years for the term of sixteen years, an enumeration of all the white inhabitants of this State shall be made, in such manner as shall be directed by law. The number of senators and representatives shall, at the first regular session of the legislature after such enumeration, be fixed by law, and apportioned among the several counties according to the number of white inhabitants in each; and the house of representatives shall never be less than twenty-six, nor greater than thirty-nine, until the number of white

inhabitants shall be one hundred and twenty-five thousand; and after that event, at such ratio that the whole number of representatives shall never be less than thirty-nine nor exceed seventy-two.

33. When a senatorial and representative district shall be composed of two or more counties, it shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a senatorial or representative district.

34. In all elections by the General Assembly the members thereof shall vote viva voce, and the votes shall be entered on the journal.

35. For the first ten years after the organization of the government, the annual salary of the Governor shall not exceed eight hundred dollars; Secretary of State, five hundred dollars; Treasurer, three hundred dollars; Auditor, five hundred dollars; Judges of the Supreme and District Courts, each, eight hundred dollars.³⁶

On the afternoon following the adoption of this article the committee to which had been assigned the duty of superintending the enrollment of the Constitution reported that it had been correctly enrolled and was ready for the attestation of the members of the Convention and the Secretary thereof. The members of the Convention then came forward and signed their names to the Constitution adopted by the Convention.³⁷

The Constitution of 1844 was submitted to the people for ratification in April, 1845, and defeated by a vote of 6023 for and 7019 against. The chief reason for its defeat was the reduction of the boundaries by the act of Congress providing for the admission of Iowa. In August of the same year the Constitution was again submitted to the people, in the hope that they had changed their minds in

³⁶ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 180-195.

³⁷ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 176, 186.

regard to the boundaries, and that perhaps statehood was more to be desired than additional territory or the boundaries fixed by the Convention of 1844. The Constitution was, however, again defeated and as such was never re-submitted.³⁸

THE LEGISLATIVE DEPARTMENT AS PROVIDED BY
THE CONSTITUTION OF 1846

Following the second defeat of the Constitution of 1844 efforts were almost immediately put forth to secure the calling of a new Constitutional Convention. A change in politics which put James K. Polk into the presidency of the United States resulted in the appointment of James Clarke of Burlington as Governor of the Territory of Iowa. Governor Clarke had been a member of the Constitutional Convention of 1844 and regretted that the Constitution which he had helped to frame had been defeated. He did not, however, recommend any definite course to be pursued by the Legislative Assembly, but assured them that he would coöperate with them on any measure that would bring about the speedy admission of Iowa into the Union. The Legislative Assembly, feeling that the people desired State organization, passed an act providing for the election of delegates to a Constitutional Convention. This act, which was signed by the Governor on January 17, 1846, called for the election of thirty-two delegates at the township elections to be held in April. The delegates were to meet at Iowa City on the first Monday in May following their election and "proceed to form a Constitution and State Government for the future State of Iowa."³⁹

In accordance with these provisions, the delegates chosen

³⁸ Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 177-184.

³⁹ Shambaugh's *History of the Constitutions of Iowa*, pp. 285-289.

at the April election assembled at the Capitol in Iowa City, on Monday morning, May 4, 1846. James Grant called the meeting to order, and upon his motion William Thompson, who was not a member of the Convention, was appointed Secretary *pro tem*. The roll was then called and all but two delegates appeared and presented their credentials. David Olmsted, member elect from Clayton County, presented his credentials during the afternoon session of the first day and Wareham G. Clark, member elect from Appanoose and Monroe counties, presented his credentials on the following afternoon. After the roll call the Convention proceeded to the election of permanent officers. Enos Lowe and Stephen B. Shelledy were nominated as candidates for the presidency. Mr. Lowe, the Democratic candidate, was elected over Mr. Shelledy, the Whig candidate, by a vote of nineteen to nine. Mr. Thompson, Secretary *pro tem*, was retained as Secretary of the Convention, and William A. Skinner of Linn County was duly elected Sergeant-at-Arms.⁴⁰

In order to facilitate the work of the Convention the rules of the Convention of 1844 were adopted with but one exception. The rule of the Convention of 1844, "If two or more members rise at once, the President shall decide which shall first speak", was rejected by the Convention of 1846. The rules were also altered so as to provide for six standing committees instead of eleven, the number provided by the Convention of 1844. Among the standing committees first appointed was the one on Legislative Department, Suffrage, Citizenship, Education and School Lands. To this committee President Lowe appointed the following members: Shepherd Leffler, Wm. Hubbell, John J. Selman, Stephen B. Shelledy, and John Conery. The work of

⁴⁰ *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1846*, pp. 23, 24, 25, 31.

providing for suffrage and citizenship in the new Constitution was later referred to a separate committee, thus leaving to the original committee the work of providing for the Legislative Department and for Education and School Lands.⁴¹

The report of the Committee on the Legislative Department was presented by the chairman, Mr. Leffler, on Friday morning, May 8, 1846, and read as follows:

1. The Legislative authority of this State shall be vested in a Senate and House of Representatives, which shall be designated the General Assembly of the State of Iowa, and the style of their laws shall commence in the following manner: "Be it enacted by the General Assembly of the State of Iowa."

2. The sessions of the General Assembly shall be biennial, and shall commence on the first Monday of December next ensuing the election of its members, unless the Governor of the State shall in the interim convene the General Assembly by proclamation.

3. The members of the House of Representatives shall be chosen every second year, by the qualified electors of their respective districts, on the first Monday in August, whose term of office shall continue two years from the day of the general election.

4. No person shall be a member of the House of Representatives who shall not have attained the age of twenty-one years; who shall not be a free white male citizen of the United States; who shall not have been an inhabitant of this State or Territory, one year next preceding his election, and who shall not, at the time of his election, have an actual residence of thirty days in the county or district he may be chosen to represent.

5. Senators shall be chosen for the term of four years, at the same time and place as Representatives. They shall be twenty-five years of age, and possess the qualifications of Representatives as to residence and citizenship.

6. The number of Senators shall not be less than one third nor more than one half the Representative body; and at the first session of the General Assembly after this constitution takes effect, the Senators shall be divided by lot, as equally as may be, into two

⁴¹ *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1846*, pp. 25, 30, 32, 33.

classes; the seats of the Senators for the first class shall be vacated at the expiration of the second year, so that one half shall be chosen every two years.

7. When the number of Senators is increased they shall be annexed by lot to one of the two classes, so as to keep them as nearly equal in number as practicable.

8. The House of Representatives, when assembled, shall choose a speaker and its other officers, and the Senate shall appoint its own officers except the President; and each body shall judge of the qualifications, elections, and returns of its own members. A contested election shall be determined in such manner as shall be directed by law.

9. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

10. Each house shall sit upon its own adjournments, keep a journal of its proceedings, and publish the same; determine its rules of proceedings, punish members for disorderly behavior, and with the consent of two thirds, expel a member, but not a second time for the same offence; and shall have all other powers necessary for a branch of the General Assembly of a free and independent State.

11. Every member of the General Assembly shall have the liberty to dissent from or protest against any act or resolution which he may think injurious to the public or an individual, and have the reasons for his dissent entered on the journals; and the yeas and nays of the members of either house, on any question shall, at the desire of any two members present, be entered on the journals.

12. Senators and Representatives, in all cases except for treason, felony, and breach of the peace, shall be privileged from arrest during the session of the General Assembly, and in going to and returning from the same.

13. When vacancies occur in either house, the governor, or the person exercising the functions of the Governor, shall issue writs of election to fill such vacancies.

14. The doors of each house shall be open, except on such occasion as in the opinion of the house, may require secrecy.

15. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

16. Bills may originate in either house, and be amended, altered or rejected by the other; and every bill having passed both houses, shall be signed by the speaker and president of their respective houses.

17. Every bill which shall have passed the general assembly shall, before it become a law, be presented to the Governor. If he approve, he shall sign it; but if not, he shall return it with his objections, to the house in which it shall have originated who shall enter the same upon the journal and proceed to reconsider it; if, after such reconsideration, it again pass both houses by yeas and nays, by a majority of two thirds of the members of each house present, it shall become a law notwithstanding the Governor's objections. If any bill shall not be returned within three days after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the General Assembly by adjournment prevent such return.

18. No money shall be drawn from the treasury but in consequence of appropriations made by law.

19. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws, at every regular session of the General Assembly.

20. The House of Representatives shall have the sole power of impeachment. All impeachments shall be tried by the senate. When sitting for that purpose, the senators shall be upon oath or affirmation, no person shall be convicted without the concurrence of two thirds of the members present.

21. The Governor, lieutenant Governor, Secretary of State, Auditor, Treasurer and Judges of the Supreme and District courts, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend farther than to removal from office, and disqualification to hold any office of honor, trust or profit under this state; but the party convicted or acquitted shall nevertheless be liable and subject to indictment, trial and punishment, according to law. All other civil officers shall be tried for misdemeanors in office in such manner as the General Assembly may provide.

22. No Senator or Representative shall, during the time for which he shall have been elected, be appointed to any civil office of profit under this state, which shall have been created, or the emoluments of which shall have been increased during such term, except such offices as may be filled by elections by the people.

23. No person holding any lucrative office under the United States or this State, or any other power, shall be eligible to the General Assembly; Provided, that, offices in the militia to which there is attached no annual salary, or the office of justice of the peace, or post masters whose per centage shall not amount to more than three hundred dollars, shall not be deemed lucrative.

24. No person who may hereafter be a collector or holder of public moneys shall have a seat in either house of the General Assembly, or be eligible to any office of trust or profit under this state, until he shall have accounted for, and paid into the treasury, all sums for which he may be accountable.

25. Each member of the General Assembly shall receive a compensation to be fixed by law for his services, to be paid out of the treasury of the state. Such compensation shall not exceed two dollars per day for the period of fifty days from the commencement of the session, and shall not exceed the sum of one dollar per day for the remainder of the session; when convened in extra session by the governor, they shall receive such sum as shall be fixed for the first fifty days of the ordinary session. They shall also receive two dollars for every twenty miles they shall travel, in going to and returning from their place of meeting on the most usual route; provided however, that the members of the first legislature under this constitution, shall receive two dollars per day for their services during the entire session.

26. Every law shall embrace but one object, which shall be expressed in the title.

27. No law of the General Assembly, of a public nature, shall take effect until the same shall be published and circulated in the several counties of this State by authority; If the General Assembly shall deem any law of immediate importance, they may provide that the same shall take effect by publication in newspapers in the state.

28. No divorce shall be granted by the General Assembly.

29. No lottery shall be authorized by this State, nor shall the sale of lottery tickets be allowed.

30. Members of the General Assembly shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear or affirm (as the case may be) that I will support the constitution of the United States and the constitution of the State of Iowa, and that I will faithfully discharge the duties of Senator (or Representative as the case may be) according to the best of my ability;" and members elect of the General Assembly are hereby empowered to administer to each other the said oath or affirmation.

31. Within two years after the first meeting of the General Assembly under this constitution, and within every subsequent term of four years for the term of sixteen years, an enumeration of all the white inhabitants of this state shall be made, in such manner as shall be directed by law. The number of Senators and Representatives shall, at the first regular session of the legislature after such an enumeration, be fixed by law, and apportioned among the several counties according to the number of white inhabitants in each; and the house of representatives shall never be less than twenty-six, nor greater than thirty-nine, until the number of white inhabitants shall be one hundred and seventy-five thousand; and after that event, at such ratio that the whole number of Representatives shall never be less than thirty-nine nor exceeding seventy-two.

32. When a senatorial and representative district shall be composed of two or more counties, it shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a senatorial or representative district.

33. In all elections by the General Assembly, the members thereof shall vote viva voce, and the votes shall be entered on the journal.

34. For the first ten years after the organization of the government, the annual salary of the Governor shall not exceed —— dollars; Secretary of State —— dollars; Treasurer, —— dollars; Auditor, —— dollars; Judges of the Supreme and District courts, each, —— dollars.⁴²

Following the reading of this report, forty copies of it were ordered to be printed for the use of the Convention.

⁴² *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1846, pp. 42-46.*

This report on the legislative department differed very little from the article in the Constitution of 1844, the greatest difference being that the committee in drawing up its report omitted the provision in regard to the distribution of governmental powers and section twenty-nine of the old Constitution, "No county or counties shall be liable for the expense of laying out or establishing any road or roads authorized by special act of the assembly." The report also provided that the sessions of the General Assembly should commence on the first Monday in December instead of the first Monday in January; the time for electing members of the House of Representatives was changed from the third Tuesday in October to the first Monday in August; the time granted the Governor for the consideration of bills passed by the legislature was reduced from five to three days; and the membership of the House of Representatives was limited to thirty-nine members until the population of the State should reach one hundred and seventy-five thousand in number instead of one hundred and twenty-five thousand as provided in the Constitution of 1844. Outside of these few changes the report of the Committee on the Legislative Department was almost identical in reading with this article as it appeared in the rejected Constitution.

During the consideration of the Article on the Legislative Department both in Committee of the Whole and in the Convention proper, few changes were made other than those necessitated by changes made elsewhere in the Constitution or by omissions in the report of the standing committee on this subject. The provision for the distribution of governmental powers was added. As adopted by the Convention this article read:

1. The powers of the government of Iowa shall be divided into three separate departments, the Legislative, the Executive, and

Judicial, and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any function appertaining to either of the others, except in the cases hereinafter expressly directed or permitted.⁴³

Under the Constitution of 1844 the Lieutenant Governor was to act as President of the Senate. Since the new instrument of government contained no provision for a Lieutenant Governor, section eight on the election of officers was changed in order to give the Senate the power to choose its own presiding officer. It was also necessary to strike "Lieutenant Governor" from section twenty-one making State officers liable to impeachment. Section sixteen on the origin of bills was amended so as to make it necessary for all bills for the purpose of raising revenue to originate in the House of Representatives. Section seventeen referring to executive approval of bills was so amended as to except Sunday from the time limit that the Governor had for the consideration of bills referred to him.

Section eighteen, which provided that money should not be drawn from the treasury except as appropriated by law was shifted so as to make it appear between sections twenty-four and twenty-five. Thus, the numbering of all sections beginning with section nineteen to twenty-four inclusive, was changed, section nineteen becoming section eighteen and so on. Section twenty-three on disqualification was amended so as to make justices of the peace and postmasters ineligible to membership in the General Assembly if they received an annual compensation exceeding one hundred dollars. Section thirty-one, providing for the enumeration of the inhabitants of the State, was amended so that the enumeration would be made by the authority of the General Assembly within one year after the ratification of the Constitution, and every two years

⁴³ *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1846, pp. 63, 64.*

thereafter for eight years, as against two years following the ratification of the Constitution and within every four year period for a period of sixteen years as provided in the report of the Committee on the Legislative Department.

Section thirty-two providing for senatorial and representative districts was amended so as to include congressional districts, and section thirty-four dealing with the salaries of State officers was completed as no salary for any official was specified by the standing committee. The salary to be received by the Governor was not to exceed one thousand dollars; Secretary of State, five hundred dollars; Treasurer, four hundred dollars; Auditor, six hundred dollars; and Judge of the Supreme and district courts, one thousand dollars.⁴⁴ A few minor changes were made by the Convention and by the Committee on Revision, such as substituting the words "General Assembly" for "Legislature". None of these changes affected the content and purpose of the Article on the Legislative Department. The article as finally passed upon by the Convention read:

OF THE DISTRIBUTION OF POWERS

1. The powers of the government of Iowa shall be divided into three separate departments; the legislative, the executive, and judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any function appertaining to either of the others, except in the cases hereinafter expressly directed or permitted.

LEGISLATIVE DEPARTMENT

1. The Legislative authority of this State shall be vested in a Senate and House of Representatives, which shall be designated the General Assembly of the State of Iowa, and the style of their laws shall commence in the following manner: "Be it enacted by the General Assembly of the State of Iowa."

2. The sessions of the General Assembly shall be biennial, and

⁴⁴ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1846, pp. 57, 58, 59, 60, 61, 62, 63.

shall commence on the first Monday of December next ensuing the election of its members; unless the Governor of the State shall, in the interim, convene the General Assembly by proclamation.

3. The members of the House of Representatives shall be chosen every second year, by the qualified electors of their respective districts, on the first Monday in August, whose term of office shall continue two years from the day of the general election.

4. No person shall be a member of the House of Representatives who shall not have attained the age of twenty-one years; be a free white male citizen of the United States, and have been an inhabitant of this State or Territory one year next preceding his election; and at the time of his election, have an actual residence of thirty days in the county or district he may be chosen to represent.

5. Senators shall be chosen for the term of four years, at the same time and place as representatives, they shall be twenty-five years of age, and possess the qualifications of representatives as to residence and citizenship.

6. The number of Senators shall not be less than one-third nor more than one half the representative body, and at the first session of the General Assembly after this Constitution takes effect, the Senators shall be divided by lot, as equally as may be, into two classes; the seats of the Senators of the first class shall be vacated at the expiration of the second year, so that one half shall be chosen every two years.

7. When the number of Senators is increased they shall be annexed by lot to one of the two classes, so as to keep them as nearly equal in number as practicable.

8. Each house shall choose its own officers and judge of the qualification, election, and return of its own members. A contested election shall be determined in such manner as shall be directed by law.

9. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

10. Each house shall sit upon its own adjournments, keep a journal of its proceedings, and publish the same; determine its rules of proceedings, punish members for disorderly behavior, and with the consent of two-thirds, expel a member, but not a second time for the same offence, and shall have all other powers necessary

for a branch of the General Assembly of a free and independent state.

11. Every member of the General Assembly shall have the liberty to dissent from or protest against any act or resolution which he may think injurious to the public or an individual, and have the reasons for his dissent entered on the journals; and the yeas and nays of the members of either house, on any question, shall, at the desire of any two members present, be entered on the journals.

12. Senators and representatives, in all cases except treason, felony, or breach of the peace, shall be privileged from arrest during the session of the General Assembly, and in going to and returning from the same.

13. When vacancies occur in either house, the Governor, or the person exercising the functions of the Governor, shall issue writs of election to fill such vacancies.

14. The doors of each house shall be open, except on such occasion as, in the opinion of the house, may require secrecy.

15. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

16. Bills may originate in either house, except bills for revenue, which shall always originate in the House of Representatives, and may be amended, altered, or rejected by the other, and every bill having passed both houses, shall be signed by the Speaker and President of their respective houses.

17. Every bill which shall have passed the General Assembly shall, before it become a law, be presented to the Governor. If he approve, he shall sign it, but if not, he shall return it with his objections, to the house in which it originated, which shall enter the same upon the journal and proceed to reconsider it; if, after such reconsideration, it again pass both houses, by yeas and nays, by a majority of two-thirds of the members of each house present, it shall become a law notwithstanding the Governor's objections. If any bill shall not be returned within three days after it shall have been presented to him, Sunday excepted, the same shall be a law in like manner as if he had signed it, unless the General Assembly by adjournment prevent such return.

18. An accurate statement of the receipts and expenditures of

the public money shall be attached to and published with the laws, at every regular session of the General Assembly.

19. The House of Representatives shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present.

20. The Governor, Secretary of State, Auditor, Treasurer, and Judges of the Supreme and District Courts, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust or profit under this State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial and punishment, according to law. All other civil officers shall be tried for misdemeanors in office in such manner as the General Assembly may provide.

21. No Senator or Representative shall, during the time for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased, during such term, except such offices as may be filled by elections by the people.

22. No person holding any lucrative office under the United States, or this State, or any other power, shall be eligible to the General Assembly: Provided, That offices in the militia, to which there is attached no annual salary, or the office of justice of the peace, or postmasters whose compensation does not exceed one hundred dollars per annum, shall not be deemed lucrative.

23. No person who may hereafter be a collector or holder of public moneys, shall have a seat in either house of the General Assembly, or be eligible to any office of trust or profit under this State, until he shall have accounted for and paid into the treasury, all sums for which he may be liable.

24. No money shall be drawn from the treasury but in consequence of appropriations made by law.

25. Each member of the General Assembly shall receive a compensation to be fixed by law, for his services, to be paid out of the treasury of the State. Such compensation shall not exceed two dollars per day for the period of fifty days from the commencement of the session, and shall not exceed the sum of one dollar per day

for the remainder of the session: when convened in extra session by the Governor, they shall receive such sum as shall be fixed for the first fifty days of the ordinary session. They shall also receive two dollars for every twenty miles they shall travel, in going to and returning from their place of meeting, on the most usual route: Provided, however, That the members of the first General Assembly under this constitution shall receive two dollars per day for their services during the entire session.

26. Every law shall embrace but one object, which shall be expressed in the title.

27. No law of the General Assembly, of a public nature, shall take effect until the same shall be published and circulated in the several counties of this State, by authority. If the General Assembly shall deem any law of immediate importance, they may provide that the same shall take effect by publication in newspapers in the state.

28. No divorce shall be granted by the General Assembly.

29. No lottery shall be authorized by this State, nor shall the sale of lottery tickets be allowed.

30. Members of the General Assembly shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: I do solemnly swear, or affirm (as the case may be,) that I will support the Constitution of the United States, and the Constitution of the State of Iowa, and that I will faithfully discharge the duties of Senator, (or Representative, as the case may be,) according to the best of my ability. And members of the General Assembly are hereby empowered to administer to each other the said oath or affirmation.

31. Within one year after the ratification of this constitution, and within every subsequent term of two years, for the term of eight years, an enumeration of all the white inhabitants of this state shall be made, in such manner as shall be directed by law. The number of Senators and Representatives shall, at the first regular session of the General Assembly after such enumeration, be fixed by law, and apportioned among the several counties according to the number of white inhabitants in each, and shall also, at every subsequent regular session, apportion the House of Representatives, and every other regular session the Senate for eight years, and the House of Representatives shall never be less than twenty-six, nor

greater than thirty-nine, until the number of white inhabitants shall be one hundred and seventy-five thousand; and after that event, at such ratio that the whole number of representatives shall never be less than thirty-nine nor exceeding seventy-two.

32. When a Congressional, Senatorial, or Representative district shall be composed of two or more counties, it shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a congressional, senatorial, or representative district.

33. In all elections by the General Assembly, the members thereof shall vote viva voce, and the votes shall be entered on the journal.

34. For the first ten years after the organization of the government, the annual salary of the Governor shall not exceed one thousand dollars; Secretary of State, five hundred dollars; Treasurer, four hundred dollars; Auditor, six hundred dollars; Judge of the Supreme and District Courts, each one thousand dollars.⁴⁵

This article was very similar to that adopted by the Convention of 1844. The chief point of difference was that it provided that the sessions of the General Assembly should begin on the first Monday of January instead of the first Monday in December; that the Senate was to choose its own presiding officer; that bills for revenue must originate in the House of Representatives; and that the salaries for State officers were fixed for a term of ten years. That of the Governor was not to exceed \$1000, the Secretary of State \$500, the Treasurer \$400, the Auditor \$600, and judges of the Supreme and district courts \$1000. The provision that counties should not be liable for the expense of laying out or establishing roads authorized by special act of the General Assembly which appeared in the Article on the Legislative Department of the Constitution of 1844 was not included in this article of the Constitution of 1846.

The Constitutional Convention of 1846 completed its

⁴⁵ *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1846*, pp. vi-xi.

labors on the morning of the 19th of May and on August 3rd following the new Constitution was submitted to the people. At this election the Constitution was ratified by the small majority of 456 votes, 9492 having been cast for the Constitution and 9036 against it.

The boundaries as laid down in the new Constitution, and as defined by Congress, were approved by President Polk on August 4, 1846, but it was not until December 28th, that Iowa was finally admitted to full membership into the Union.⁴⁶

THE LEGISLATIVE DEPARTMENT AS PROVIDED
BY THE CONSTITUTION OF 1857

The Constitution of 1846 had scarcely been adopted when agitation was started for its revision or amendment. The people of Iowa were anxious to repeal the restrictions upon banking contained in the Constitution of the State and to amend the provision concerning the selection of members of the Supreme Court. It was not, however, until January 24, 1855, that the General Assembly passed an act which provided for the submission to the electorate of the question of calling a convention to revise the Constitution. In accordance with the provisions of this act, the question was submitted to the people at the general election held on the first Monday in August, 1856, and 32,790 votes were cast in favor of a convention and 14,162 votes against it. Thus, by an overwhelming majority, the people of Iowa voted in favor of constitutional revision.⁴⁷

At the November election held on the Tuesday following the first Monday, thirty-six delegates were chosen. According to the directions set forth in the act of January, 1855,

⁴⁶ Shambaugh's *History of the Constitutions of Iowa*, pp. 317, 327; Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, p. 213.

⁴⁷ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, p. ii; Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 217-222.

these delegates assembled in the Supreme Court room of the Capitol at Iowa City on January 19, 1857.⁴⁸ The first meeting of the Convention was called to order by Hosea W. Gray of Linn County at 10 o'clock, A. M., on the day set by the act providing for the Convention. Mr. Gray nominated John A. Parvin to act as President *pro tem* and this nomination was confirmed by the delegates present. On the following day permanent organization was effected and Francis Springer was chosen President over his Democratic competitor, Jonathan C. Hall, by a vote of twenty to thirteen. The remaining officials were also the choice of the Republican party, the vote being in every instance a strictly party vote.⁴⁹

One of the first things done by the Convention following permanent organization was to provide for a number of standing committees. Among these committees was the Committee on the Distribution of Powers and Legislative Department, to which President Springer appointed J. A. Parvin, Edward Johnstone, J. C. Traer, J. H. Emerson, and Thomas Seeley.⁵⁰ Of these men, Parvin, Johnstone, and Traer were the most active, ranking high among the leaders of the Convention in discussion and debate.

Soon after the appointment of the Committee on the Legislative Department resolutions began to be referred to them from time to time in regard to changes that were desired in certain portions of the Article on Legislative Department as incorporated in the Constitution of 1846.

⁴⁸ Shambaugh's *History of the Constitutions of Iowa*, pp. 335, 336.

⁴⁹ *Journal of the Constitutional Convention of the State of Iowa, 1857*, pp. 3, 10-15.

The delegates of the Convention who were members of the Republican party held a caucus on the evening prior to the first assemblage of the Convention at which time they decided upon the officers whom they wished to elect.—*Recollections of Judge Francis Springer in the Annals of Iowa* (Third Series), Vol. II, pp. 583, 584.

⁵⁰ *Journal of the Constitutional Convention of the State of Iowa, 1857*, p. 26.

The first of these resolutions related to section sixteen which dealt with the origin and passage of bills. It was recommended that the section be so revised as to require the vote on the final passage of bills to be by ayes and noes and to be entered upon the journal; further that no bill should become a law without the concurrence "of a majority of all the members elect in each house."⁵¹ On the following day, January 22nd, another resolution was referred to the Committee on the Legislative Department. This required the committee to inquire into the expediency of adopting the following recommendations in regard to the Article on the Legislative Department in the existing Constitution.

First to amend section two so as to provide for annual sessions of the legislature instead of biennial sessions, and to fix the date of meeting on the first Monday of January.

Second to amend section three so as to change the time of electing Representatives from the first Monday in August to the first Tuesday after the first Monday in November.

Third to reduce the age qualification for membership in the Senate as provided in section five, from twenty-five to twenty-one years.

Fourth to amend section twenty-five so as to increase the per diem allowance of members of the General Assembly from two to three dollars.

Fifth to strike out section twenty-six which provides that every law should embrace but one object, and section twenty-seven which provides for the publication of new laws.

Sixth to amend section thirty-one "so that the census shall be taken by the authority of the State in 1865, and every tenth year thereafter, and then that the apportionment of members of the General Assembly be made according to population".

⁵¹ *Journal of the Constitutional Convention of the State of Iowa, 1857, p. 29.*

Seventh to strike out section thirty-four which sets the maximum salary to be received by State officials.

Eighth to add the following as a new section:

No bill shall be passed unless by the assent of the members elected to each branch of the General Assembly, and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered on the Journal.

Ninth to add the following section:

The assent of the two-thirds of the members elected to each branch of the General Assembly, shall be requisite to every bill appropriating the public money, or property for local or private purposes.⁵²

During the afternoon session of the same day James F. Wilson offered a resolution which provided that the committee inquire into the expediency of adopting the following section:

No extra compensation shall be made to any officer, public agent, or contractor, after the service shall have been rendered or the contract entered into: nor shall any money be paid on any claim, the subject matter of which shall not have been provided for by pre-existing law unless such compensation or claim be allowed by two-thirds of the members elected to each branch of the General Assembly.⁵³

Following the reference of the above proposal, Daniel H. Solomon offered a resolution requiring the Committee on the Legislative Department to consider the feasibility of making any voter eligible to any office in the State. Only one other resolution was referred to the Committee on the Legislative Department. This resolution, offered by John Edwards, embraced a number of subjects which he proposed to take out of the sphere of the power of the General Assembly. As presented to the Convention this resolution read:

⁵² *Journal of the Constitutional Convention of the State of Iowa, 1857, p. 35.*

⁵³ *Journal of the Constitutional Convention of the State of Iowa, 1857, p. 43.*

Resolved, That the committee on the Legislative Department be instructed to inquire into the expediency of reporting an amendment to the Constitution, providing that the General Assembly shall not pass local or special laws, in any of the following enumerated cases, that is to say:

Regulating the jurisdiction and duties of Justices of the Peace and Constables;

For the punishment of crime and misdemeanors;

Regulating the practice in Courts of Justice;

Providing for changing the venue in civil and criminal cases;

Granting divorces;

Changing the names of persons;

For laying out, opening and working on highways, and for the election or appointment of township trustees and supervisors;

Vacating roads, town plots, streets, alleys and public squares;

Summoning and empannelling grand and petit jurors and providing for their compensation;

For the assessment and collection of taxes for state, county, township or road purposes;

Providing for supporting common schools and for the preservation of school funds;

In relation to fees or salaries;

In relation to interest on money;

Providing for opening and conducting elections of State, county or township officers and designating the place of voting;

Providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities, by executors, administrators, guardians or trustees.⁵⁴

This resolution was also adopted and referred to the Committee on the Distribution of Powers and Legislative Department. It now remained to be seen what influence these resolutions would have upon the report of this committee.

The first report of the Committee on the Distribution of Powers and Legislative Department was made on Monday afternoon, January 26th. This report related to the distri-

⁵⁴ *Journal of the Constitutional Convention of the State of Iowa, 1857*, pp. 50, 51, 52.

bution of powers and recommended that the provision as it appeared in the Constitution of 1846 should be adopted without amendment. As reported, Article III read:

1. The powers of the government of Iowa shall be divided into three separate departments: The Legislative, the Executive and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted.

This report was laid upon the table without discussion and later adopted in its original form.⁵⁵ On Thursday, January 29th, the same committee made its report upon the legislative department. This consisted of thirty-nine sections. Of these twenty-two were taken without change from the Article on the Legislative Department of the Constitution of 1846, one with no material change, ten with changes of importance, and one — section thirty-one of the old Constitution, which provided for the enumeration of the inhabitants of the State and the number of Senators and Representatives — was separated into three sections and altered to meet the needs of the times. Thus, only three really new sections were added to the Article on the Legislative Department by the standing committee. The new sections added were sections eighteen, thirty-one, and thirty-two of the report, which represent some of the views set forth in the resolutions referred to the committee. The report as first presented to the Convention read:

1. The legislative authority of this State shall be vested in a Senate and House of Representatives, which shall be designated the General Assembly of the State of Iowa; and the style of their laws shall commence in the following manner: "Be it enacted by the General Assembly of the State of Iowa."

2. The sessions of the General Assembly shall be biennial, and

⁵⁵ *Journal of the Constitutional Convention of the State of Iowa, 1857*, pp. 42, 364.

shall commence on the second Monday of January next ensuing the election of its members; unless the Governor of the State shall, in the interim, convene the General Assembly by proclamation.

3. The members of the House of Representatives shall be chosen every second year, by the qualified electors of their respective districts, on the second Tuesday in October, except the years of the Presidential election, when the election shall be on the Tuesday next after the first Monday in November; whose term of office shall continue two years from the Tuesday next after the first Monday in November.

4. No person shall be a member of the House of Representatives who shall not have attained the age of twenty-one years; be a free white male citizen of the United States, and have been an inhabitant of this State one year next preceding his election; and at the time of his election have an actual residence of thirty days in the county or district he may be chosen to represent.

5. Senators shall be chosen for the term of four years, at the same time and place as Representatives; they shall be twenty-five years of age, and possess the qualifications of Representatives as to residence and citizenship.

6. The number of Senators shall not be less than one-third, nor more than one-half the Representative body. The present Senators shall remain in office during the term for which they were elected, and shall be divided into two classes. Those Senators whose term of office expires on the first Monday in August, 1858, shall be one class, and those Senators whose term of office expires on the first Monday in August, 1860, shall be the other class; so that one-half shall be chosen every two years.

7. When the number of Senators is increased, they shall be annexed by lot to one of the two classes, so as to keep them as nearly equal in number as practicable.

8. Each House shall choose its own officers, and judge of the qualification, election, and return of its own members. A contested election shall be determined in such manner as shall be directed by law.

9. A majority of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each House may provide.

10. Each House shall sit upon its own adjournments, keep a journal of its proceedings, and publish the same; determine its rules of proceedings, punish members for disorderly behavior, and, with the consent of two-thirds, expel a member, but not a second time for the same offense; and shall have all other powers necessary for a branch of the General Assembly of a free and independent State.

11. Every member of the General Assembly shall have the liberty to dissent from, or protest against, any act or resolution which he may think injurious to the public or an individual, and have the reasons for his dissent entered on the journals; and the yeas and nays of the members of either House, on any question, shall, at the desire of any two members present, be entered on the journals.

12. Senators and Representatives, in all cases, except treason, felony or breach of the peace, shall be privileged from arrest during the session of the General Assembly, and in going to and returning from the same.

13. When vacancies occur in either House, the Governor, or the person exercising the functions of Governor, shall issue writs of election to fill such vacancies.

14. The doors of each House shall be open, except on such occasion as, in the opinion of the House, may require secrecy.

15. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

16. Bills may originate in either House, and may be amended, altered, or rejected by the other; and every bill having passed both Houses, shall be signed by the Speaker and President of their respective Houses.

17. Every bill which shall have passed the General Assembly, shall, before it becomes a law, be presented to the Governor. If he approve, he shall sign it; but if not, he shall return it with his objections to the House in which it originated, which shall enter the same upon the journal and proceed to reconsider it, if, after such reconsideration, it again pass both Houses, by yeas and nays, by a majority of two-thirds of the members of each House present, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within three days after it shall

have been presented to him, Sundays excepted, the same shall be a law in like manner as if he had signed it, unless the General Assembly, by adjournment, prevent such return.

18. No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the General Assembly, and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered on the journal.

19. An accurate statement of the receipts and expenditures of the public money, shall be attached to and published with the laws, at every regular session of the General Assembly.

20. The House of Representatives shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present.

21. The Governor, Secretary of State, Auditor, Treasurer, Judges of the Supreme and District Courts, Superintendent of Public Instruction, and Attorney General, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit, under this State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment, according to law. All other civil officers shall be tried for misdemeanors in office, in such manner as the General Assembly may provide.

22. No Senator or Representative shall, during the time for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased during such term, except such offices as may be filled by elections by the people.

23. No person holding any lucrative office under the United States, or this State, or any other power, shall be eligible to the General Assembly: *Provided*, that offices in the militia, to which there is attached no annual salary, or the office of justice of the peace, or postmasters whose compensation does not exceed one hundred dollars per annum, or notary public, shall⁵⁶ be deemed lucrative.

⁵⁶ The word "not" was omitted here due no doubt to oversight, as the provision with its omission does not convey the intent of the Constitution framers, and it was later added by the Convention.

24. No person who may hereafter be a collector or holder of public moneys, shall have a seat in either House of the General Assembly, or be eligible to any office of trust or profit under this State, until he shall have accounted for and paid into the treasury all sums for which he may be liable.

25. No money shall be drawn from the treasury but in consequence of appropriations made by law.

26. Each member of the General Assembly shall receive a compensation to be fixed by law, for his services, to be paid out of the treasury of the State. Such compensation shall not exceed three dollars per day for the period of sixty days from the commencement of the session, and shall not exceed the sum of two dollars per day for the remainder of the session; when convened in extra session by the Governor, they shall receive such sums per diem as shall be fixed for the first sixty days of the ordinary session. They shall also receive three dollars for every twenty miles they travel, in going to and returning from their place of meeting, on the nearest traveled route.

27. No law of the General Assembly, of a public nature, shall take effect until the fourth day of July next after the passage thereof. If the General Assembly shall deem any law of immediate importance, they may provide that the same shall take effect by publication in newspapers in the State.

28. No divorce shall be granted by the General Assembly.

29. No lottery shall be authorized by this State; nor shall the sale of lottery tickets be allowed.

30. Every act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.

31. The General Assembly shall not pass local or special laws in the following cases:

For the assessment and collection of taxes for State, county or road purposes;

For laying out, opening and working on roads or highways;

For changing the names of persons;

For the incorporation of cities or towns;

For vacating roads, town plats, streets, alleys, or public squares;

In all cases above enumerated, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.

32. No extra compensation shall be made to any officer, public agent, or contractor, after the service shall have been rendered, or the contract entered into; nor, shall any money be paid on any claim the subject matter of which shall not have been provided for by pre-existing laws, and no public money or property shall be appropriated for local, or private purposes, unless such appropriation, compensation, or claim, be allowed by two-thirds of the members elected to each branch of the General Assembly.

33. Members of the General Assembly shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear, or affirm, (as the case may be,) that I will support the Constitution of the United States, and the Constitution of the State of Iowa, and that I will faithfully discharge the duties of Senator, (or Representative, as the case may be,) according to the best of my ability." And members of the General Assembly are hereby empowered to administer to each other the said oath or affirmation.

34. The General Assembly shall, in the years 1856, 1862, 1864, 1866, 1868, and 1875, and every ten years thereafter, cause an enumeration to be made, of all the white inhabitants of the State.

35. The number of Senators and Representatives shall, at the next session following each period of making such enumeration, and the next session following each United States census, be fixed by law, and apportioned among the several counties, according to the number of white inhabitants in each.

36. The Senate shall not consist of more than fifty members, nor the House of Representatives of more than one hundred.

37. When a Congressional, Senatorial, or Representative District shall be composed of two or more counties, it shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a Congressional, Senatorial or Representative district.

38. In all elections by the General Assembly, the members thereof shall vote *viva voce*; and the votes shall be entered on the journal.

39. The annual salary of the Governor shall not exceed twenty-

five hundred dollars; Secretary, Treasurer, and Auditor of State, fifteen hundred dollars each; Judges of the Supreme Court, twenty-five hundred dollars each; Judges of the District two thousand dollars each.⁵⁷

Following the usual procedure this report was laid upon the table and one hundred copies ordered to be printed for the use of the Convention.

Some days later the report was taken up for consideration and certain of its provisions discussed and debated at great length. During the various sittings upon this article, twenty-two sections of the original report of the Committee on the Distribution of Powers and the Legislative Department were adopted without amendment. These sections⁵⁸ were 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 22, 25, 28, 29, 30, 32, 33, 37, and 38. A slight alteration was made in the wording of section 30 by the Committee on Revision but this was of no material importance. Sections 1, 2, 23, and 24 of this report received unimportant changes, and sections 3, 4, 6, 7, 17, 21, 26, 27, 31, 34, 35, and 36 received changes of such importance as to warrant their further consideration. Section 39 of the report, in regard to the annual salary of State officers, was dropped entirely and some new provisions were added.⁵⁹

Section two, providing for biennial sessions of the

⁵⁷ *Journal of the Constitutional Convention of the State of Iowa*, 1857, pp. 82-87, 120.

⁵⁸ Owing to the fact that sections six and seven were combined in the Constitution the sections here referred to in the committee's report beginning with section eight and including section thirty-six do not correspond with the section of the same number in the Constitution, but in each case were reduced one point in number. Thus, section eight becomes section seven, section nine, section eight and so forth.

⁵⁹ The section numbers here indicated represent those of the first report of the Committee on the Legislative Department. For a comparison of the original report with the Article on the Legislative Department in the Constitution see the *Journal of the Constitutional Convention of the State of Iowa*, 1857, pp. 82-87, and appendix pp. 7-11.

legislature, although adopted without significant change was discussed at greater length than any other section in the entire article. The chief point of contention was the question as to whether the sessions should be annual or biennial. Upon this question the delegates were not divided along party lines for of the fourteen members speaking upon this subject nine were Republicans and five Democrats. Of these men five Republicans favored biennial sessions and four preferred annual sessions or annual sessions for a period of from three to five years. Two Democrats favored biennial sessions and three preferred annual sessions or annual sessions for a period of three years. The chief argument of those who favored annual sessions was that the State was so new and that there were so many new enterprises to be undertaken such as the building of railroads, the erection of charitable institutions, the establishment of banks, and the like, that it would be necessary to hold annual sessions of the legislature in order to keep the laws up to date with the rapid advance of internal improvements.

The argument of those who opposed annual sessions was that annual sessions were too expensive, and that they were not needed: a new provision restrained the legislature from entering upon local legislation. This would give the legislature ample time at its biennial session to handle the subjects upon which legislation was needed. Besides the tendency was to get too much legislation which was worse than too little. An attempt was made to secure annual sessions of the legislature for a period of five years, then three years, but every attempt at change ended in failure and finally the section was agreed to without any essential change although the Committee on Revision changed its wording slightly.⁶⁰

⁶⁰ *The Debates of the Constitutional Convention of the State of Iowa, 1857,*

Section three of the report, providing for the date of electing members of the House of Representatives and the time that their term of office should begin, was objected to by some of the delegates because of the lack of uniformity in the time for holding elections. To obviate the necessity of holding an additional election on the year of presidential elections, the standing committee provided that on these years the election of Representatives should take place on the date of the presidential election. The election in other years was to be held on the second Tuesday in October. The delegates preferred to hold the election in October because at that time of the year the weather would permit the electors to come to the polls to cast their ballots. James A. Young later proposed to amend the section so as to make all elections for State Representatives and Senators come on the second Tuesday in October. Mr. Young believed it to be a matter of highest importance that State elections should be kept separate and distinct from the presidential elections and that they should be held on the same date as nearly as possible each election year. This amendment was defeated by a vote of thirteen for it and nineteen against it and the date for election of Representatives and Senators remained the same as reported by the standing committee until 1884, when an amendment was added to the Constitution which provided that the "general election for state, district, county and township officers shall be held on the Tuesday next after the first Monday in November." Section three was, however, amended in Convention so as to have the term of Representatives and Senators "commence on the first day of January next after their election, and continue two years". The latter provision was further enlarged by the Committee on Revision

by the addition of the words, "and until their successors are elected and qualified."⁶¹

Some time was spent in discussing section four which provided the qualifications for members of the House of Representatives. The chief point of contention was the residence requirement of thirty days in the county or district from which the Representative was to be chosen. Certain members contended that this requirement was entirely too lenient and to protect the people against designing politicians they succeeded by a vote of sixteen to fifteen in increasing this requirement from thirty days to one year. Shortly afterwards a motion was made to reconsider the vote by which this amendment was adopted and it was agreed to by a vote of eighteen to sixteen. The residence requirement thus remained thirty days, but on the next to the last day of the Convention it was agreed by general consent to raise this requirement to sixty days.⁶²

Sections six and seven, dealing respectively with the number and classification of Senators, were amended by the Convention and finally combined by the Committee on Revision into a single section. During the consideration of section seven considerable time was spent in discussing the question as to whether the present members of the General Assembly should hold office after the adoption of the new Constitution or if new elections should be held and new Senators and Representatives chosen. This discussion had little to do with the subject in hand but came as the result of a proposal by D. P. Palmer to add the following to the beginning of this section: "The senators shall be so classified by lot that one-half shall be chosen every two years."

⁶¹ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 513-515, 575, 576, 1008; Shambaugh's *The Constitution of the State of Iowa and Amendments from 1857 to 1922*, p. 106.

⁶² *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 557, 567-573, Vol. II, p. 1015.

The amendment offered by Mr. Palmer was agreed to. The sections as combined and reported by the Committee on Revision and finally adopted by the Convention read:

The number of Senators shall not be less than one-third, nor more than one-half the Representative body; and shall be so classified by lot, that one class being as nearly one-half as possible, shall be elected every two years. When the number of Senators is increased, they shall be annexed by lot to one or the other of the two classes, so as to keep them as nearly equal in numbers as practicable.⁶³

The next provision of the standing committee's report that caused discussion was section seventeen which, owing to the fact that sections six and seven were combined, became section sixteen of the Constitution. This section provided for the executive approval of bills passed by the General Assembly. Robert Gower opposed the idea of requiring a two-thirds vote to pass a law over the Governor's veto: he proposed to reduce this requirement to seven-twelfths. A. H. Marvin was of the opinion that only a majority vote of all the members should be required for this purpose. Wm. Penn Clarke would even go so far as to require only a majority vote of those present at the time the bill was being reconsidered. Mr. Parvin was opposed to amendment in any form for he believed that there was no danger in the exercise of the veto power but on the contrary "that it is a safe and salutary restriction upon the hasty action of the legislature." The proposals of Mr. Marvin and Mr. Clarke received no consideration for want of seconds, and that of Mr. Gower was not agreed to by the Convention. Some days afterward Mr. Wilson proposed to add to this section as follows:

Any bill submitted to the governor for his approval during the last three days of a session of the general assembly, shall be

⁶³ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 516-524; Journal of the Constitutional Convention of the State of Iowa, 1857, Appendix, p. 7.*

deposited by him in the office of the secretary of state within thirty days after the adjournment, with his approval if approved by him, and with his objections if he disapproves thereof.

Mr. Wilson's purpose in offering this amendment was to give the Governor more time to consider the important business which usually comes before the General Assembly in the last days of its session, and then to require him to deposit these bills with the Secretary of State within thirty days after adjournment with his approval or his reasons for disapproving the bill or bills under consideration. No objection was made to this amendment, and it was agreed to. This was the only change or addition made to this section by the Convention.⁶⁴

Section twenty-one of the report which provided for the impeachment of State officers specifically enumerated was amended so as to include all State officers. It was further amended by making these officers liable to impeachment for malfeasance. An attempt was made to strike out the word "misdemeanor" and to substitute "malfeasance" in its place because the former was considered ambiguous. This effort having failed it was agreed that the words "or malfeasance" should be added to this provision.⁶⁵ The amended section became section twenty of the Constitution.

The following substitute was adopted by the Convention for section twenty-six of the original report which provided for the compensation of members of the General Assembly:

Each member of the first General Assembly under this constitution, shall receive the sum of three dollars per diem while in session; and the further sum of three dollars for every twenty miles travel in going to and returning from the place where such

⁶⁴ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 525-527, 567, 1012; Journal of the Constitutional Convention of the State of Iowa, 1857, Appendix, pp. 8, 9.*

⁶⁵ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 527, 551, 574, 575.*

session is held, by the nearest traveled route; after which they shall receive such compensation as shall be fixed by law; but no General Assembly shall have the power to increase the compensation of its own members. And when convened in extra session they shall receive the same mileage and per diem compensation as fixed by law for the regular session and none other.

Section twenty-seven which sets the time at which laws of a public nature should take effect was enlarged so as to make all laws passed by a special session of the General Assembly become effective ninety days following their passage. Sections twenty-six and twenty-seven became sections twenty-five and twenty-six respectively in the new Constitution.⁶⁶

The prohibition of special acts of the General Assembly in certain instances as provided in section thirty-one of the report on the legislative department was the next point to arouse debate. This section was an addition to the Article on the Legislative Department in the old Constitution and was reported by the standing committee in consequence of a resolution referred to them asking for their consideration of such a provision. This resolution was taken almost verbatim from the Constitution of Indiana of 1851.⁶⁷ To the prohibitions already reported by the committee was added that in regard to the location or changing of county seats. A further prohibition was also added which provided that "no special law, changing the boundary lines of any county, shall have effect until, upon being submitted to the people of the counties affected by the change, at a general election, it shall be approved by a majority of the votes in

⁶⁶ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 528-530, 551; *Journal of the Constitutional Convention of the State of Iowa, 1857*, pp. 194, 195.

⁶⁷ *Journal of the Constitutional Convention of the State of Iowa, 1857*, pp. 51, 52; *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, p. 531; *Constitution of Indiana, 1851*, in Poore's *The Federal and State Constitutions and Colonial Charters of the United States*, Vol. I, p. 517.

each county, cast for and against it." The word "special" appearing in this provision was omitted by the Committee on Revision.⁶⁸ Just as a number of sections in the standing committee's report had their numbering changed in the Constitution because of the combination of sections six and seven, so section thirty-one became section thirty in the final product.

Section thirty-four of the original report, which became section thirty-three of the Constitution, specified the time for taking the State census. It was so amended as to set these dates on the following years: 1859, 1863, 1865, 1867, 1869, and 1875.⁶⁹ Section thirty-five of the report which became section thirty-four of the Constitution was so amended as to provide only for the number of Senators and their apportionment whereas the section as reported by the standing committee provided also for the apportionment of Representatives. This was done because the Convention had provided for a special committee to investigate the problem of representation in the House of Representatives, and thus far this committee had not reported.⁷⁰

Directly bearing upon this same subject was section thirty-six of the committee's report which provided that the Senate "shall not consist of more than fifty members, nor the House of Representatives of more than one hundred."

⁶⁸ *The Debates of the Constitutional Convention of the State of Iowa*, 1857, Vol. I, pp. 531-539, 551, 552, 556, 575, Vol. II, p. 1010; *Journal of the Constitutional Convention of the State of Iowa*, 1857, pp. 195-197, 200, 208, 209.

The Journal of the Convention states that the provision for changing county boundaries was offered as an additional section whereas the Debates of the Convention state that it was to be an addition to section thirty-one of the standing committee's report. In this instance the latter is correct.

⁶⁹ *The Debates of the Constitutional Convention of the State of Iowa*, 1857, Vol. II, pp. 1011, 1013; *Journal of the Constitutional Convention of the State of Iowa*, 1857, p. 363.

⁷⁰ *The Debates of the Constitutional Convention of the State of Iowa*, 1857, Vol. I, pp. 540, 541, 552, 553, 1011; *Journal of the Constitutional Convention of the State of Iowa*, 1857, pp. 69, 128.

Mr. Wilson thought that this number was too large and he moved to amend the section so as to fix the limit for membership in the Senate at thirty-six and for the House at seventy-two. Mr. Traer opposed this amendment because he believed that it would be "impossible to give to all parts of the State an equal and fair representation, and believing farther, that a house of large size is less apt to become corrupt and led astray in matters of legislation than a smaller house", he favored the number as set forth in the report. Daniel H. Solomon was opposed to any amendment which threatened to deprive an organized county of a Representative in the General Assembly. He also recognized the inequality in population between the newer and older counties and therefore advocated that the balance of membership in the House should be divided among the more populous counties according to their populations. He proposed, therefore, to strike out "one hundred" as the maximum membership in the House and to leave this space blank. His proposal was concurred in by a narrow margin in the Committee of the Whole, but was later disagreed to in Convention.⁷¹

Before further discussion of this section the report of the Committee on the Basis of Representation was heard. This report recommended that the sections given below be added following section thirty-six of the report on the legislative department:

Section 37. The House of Representatives shall be based upon the several counties of the State in the following manner: *Provided*, That no representative district shall contain more than four organized counties, and shall be entitled to one representative. Any district containing one or more counties, and having a number of inhabitants equal to one-half of the ratio fixed by law, shall be entitled to one representative, and any one county containing in

⁷¹ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 541-543, 553, 554.

addition to the ratio fixed by law, a fraction of one-half of that number shall be entitled to one additional representative. Provided, further, That no floating district shall hereafter be formed.

Sec. 38. At its first session under this Constitution, and at every subsequent session, the General Assembly shall proceed to fix the ratio of representation and also to form into districts, as above provided, those counties which will not be entitled to a representative singly under the provision of the preceding section.

Mr. Solomon, who was a member of this committee, dissented from the report because it failed to provide a Representative for every organized county in the State. Mr. Traer, chairman of the committee, stated that the only reason that such a provision was not made "was the fact that such a system would make the House too large." Mr. Traer further said that "the Committee fixed upon this plan of allowing the Legislature to settle the ratio and graduate the number of members to suit their convenience, provided that they did not exceed the limit fixed in the Constitution. The advantage of this system is, that it will operate equally well with any ratio which the Legislature may see fit to adopt. It will do away with the old system of districting the State by the General Assembly, prevent a large amount of corruption and gerrymandering for party purposes, and render the representation just and equitable throughout the State. And last, though not least, it will do away with the system of floats with which the newer portions of the State have been cursed for years past."

These new sections were finally adopted in very much the same form as first reported by the special Committee on the Basis of Representation. Section thirty-seven of the special report was attached with slight change in construction to section thirty-six of the original report of the standing committee. Because of conditions already referred to this section appears as section thirty-five of the Constitution. By this combination section thirty-eight of the

report of the Committee on the Basis of Representation became section thirty-six of the Constitution. The latter section received but one amendment by the Convention. This was to add the word "regular" before "sessions" so that the section would then read: "At its first session under this constitution and at every subsequent regular session", etc.⁷²

In section thirty-five of the Constitution provision was made prohibiting the formation of "floating districts". The question arises now and then as to just what was meant by a "floating district". This subject was discussed rather freely by J. C. Hall, D. H. Solomon, Amos Harris, J. C. Traer, A. H. Marvin, and J. A. Parvin in the Constitutional Convention of 1857. From the debates of the Convention, the act providing for the apportionment of the State into districts, and the definition of boundaries of Representative districts of 1857, it may be seen that a floating district was made up of the surplus population of two or more counties beyond the ratio required to secure one or more Representatives, in order to secure additional representation. For example the act above referred to provided in section forty-nine that Van Buren County should constitute the forty-ninth Representative district and have two Representatives. Section fifty-three of this act makes Henry County the fifty-third Representative district with two Representatives; and section forty-three makes Lee County the fifty-fourth district with three Representatives. Section fifty-five, however, constituted all three of the above counties — Lee, Henry, and Van Buren — into the fifty-fifth Representative district with one Representative. This was a floating district, made possible by the fact that each of these counties had a surplus population beyond that

⁷² *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 543-550, 554, 555, Vol. II, pp. 1013-1017, 1077.

required to secure the number of Representatives apportioned to it. Their surplus populations when combined were sufficiently large to demand a Representative in the General Assembly, and the so-called floating district was provided.⁷³

The last section of the report of the standing Committee on the Legislative Department was section thirty-nine which provided for salaries of certain specified State officials including that of the Governor. Some delegates were opposed to having a constitutional provision for this purpose because this matter could easily be provided for by legislation. Others contended that by so doing the executive department would be made somewhat subservient to the legislative department. The salary of judges had already been provided for under the Article on the Judicial Department. After some discussion of the subject and the defeat of a substitute as well as an amendment to the substitute it was agreed to that the section should be stricken from the report and that the salaries of those officials not already provided for in the Constitution should be left subject to legislative enactment.⁷⁴ No other amendments being proposed or additions offered the Article on the Legislative Department it was finally agreed to by the Convention in the following form:

OF THE DISTRIBUTION OF POWERS

Section 1. The powers of the government of Iowa shall be divided into three separate departments: The Legislative, the

⁷³ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 543-548; Laws of Iowa, 1856-1857, pp. 170-174.*

The purpose of a floating district was to give each county a fair representation for its surplus population. One difficulty arose from the fact that the Representative from the floating district was very likely to represent the county of his residence rather than the entire district.

⁷⁴ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 549, 550, 555, 556, 578; Journal of the Constitutional Convention of the State of Iowa, 1857, pp. 199, 210.*

Executive and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted.

LEGISLATIVE DEPARTMENT

Section 1. The Legislative authority of this State shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives; and the style of every law shall be: "Be it enacted by the General Assembly of the State of Iowa."

Sec. 2. The sessions of the General Assembly shall be biennial, and shall commence on the second Monday in January next ensuing the election of its members; unless the Governor of the State shall, in the meantime, convene the General Assembly by proclamation.

Sec. 3. The members of the House of Representatives shall be chosen every year, by the qualified electors of their respective districts, on the second Tuesday in October, except the years of the Presidential election, when the election shall be on the Tuesday next after the first Monday in November; and their term of office shall commence on the first day of January next after their election, and continue two years, and until their successors are elected and qualified.

Sec. 4. No person shall be a member of the House of Representatives who shall not have attained the age of twenty-one years, be a free white male citizen of the United States, and shall have been an inhabitant of this State one year next preceding his election, and at the time of his election shall have had an actual residence of sixty days in the county or district he may have been chosen to represent.

Sec. 5. Senators shall be chosen for the term of four years, at the same time and place as Representatives; they shall be twenty-five years of age, and possess the qualifications of Representatives as to residence and citizenship.

Sec. 6. The number of Senators shall not be less than one-third, nor more than one-half the Representative body; and shall be so classified by lot, that one class being as nearly one-half as possible, shall be elected every two years. When the number of Senators is increased, they shall be annexed by lot to one or the other of the two classes, so as to keep them as nearly equal in numbers as practicable.

Sec. 7. Each House shall choose its own officers, and judge of the qualification, election, and return of its own members. A contested election shall be determined in such manner as shall be directed by law.

Sec. 8. A majority of each House shall constitute a quorum to transact business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each House may provide.

Sec. 9. Each House shall sit upon its own adjournments, keep a journal of its proceedings, and publish the same; determine its rules of proceedings, punish members for disorderly behavior, and, with the consent of two-thirds, expel a member, but not a second time for the same offense; and shall have all other powers necessary for a branch of the General Assembly of a free and independent State.

Sec. 10. Every member of the General Assembly shall have the liberty to dissent from or protest against any act or resolution which he may think injurious to the public or an individual, and have the reasons for his dissent entered on the journals; and the yeas and nays of the members of either House, on any question, shall, at the desire of any two members present, be entered on the journals.

Sec. 11. Senators and Representatives, in all cases, except treason, felony, or breach of the peace, shall be privileged from arrest during the session of the General Assembly, and in going to and returning from the same.

Sec. 12. When vacancies occur in either House, the Governor, or the person exercising the functions of Governor, shall issue writs of election to fill such vacancies.

Sec. 13. The doors of each House shall be open, except on such occasions as, in the opinion of the House, may require secrecy.

Sec. 14. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

Sec. 15. Bills may originate in either House, and may be amended, altered, or rejected by the other; and every bill having passed both Houses, shall be signed by the Speaker and President of their respective Houses.

Sec. 16. Every bill which shall have passed the General Assembly, shall, before it becomes a law, be presented to the

Governor. If he approves, he shall sign it; but if not, he shall return it with his objections, to the House in which it originated, which shall enter the same upon their journal, and proceed to reconsider it; if, after such reconsideration, it again pass both Houses, by yeas and nays, by a majority of two-thirds of the members of each House, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within three days after it shall have been presented to him, (Sunday excepted), the same shall be a law in like manner as if he had signed it, unless the General Assembly, by adjournment, prevent such return. Any bill submitted to the Governor for his approval during the last three days of a session of the General Assembly, shall be deposited by him in the office of the Secretary of State within thirty days after the adjournment, with his approval if approved by him, and with his objections if he disapproved thereof.

Sec. 17. No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the General Assembly, and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered on the journal.

Sec. 18. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws at every regular session of the General Assembly.

Sec. 19. The House of Representatives shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present.

Sec. 20. The Governor, Judges of the Supreme and District Courts, and other State officers, shall be liable to impeachment for any misdemeanor or malfeasance in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit under this State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment according to law. All other civil officers shall be tried for misdemeanors and malfeasance in office, in such manner as the General Assembly may provide.

Sec. 21. No Senator or Representative shall, during the time for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the

emoluments of which shall have been increased during such term, except such offices as may be filled by elections by the people.

Sec. 22. No person holding any lucrative office under the United States, or this State, or any other power, shall be eligible to hold a seat in the General Assembly: But offices in the militia, to which there is attached no annual salary, or the office of justice of the peace, or postmaster, whose compensation does not exceed one hundred dollars per annum, or notary public, shall not be deemed lucrative.

Sec. 23. No person who may hereafter be a collector or holder of public moneys, shall have a seat in either house of the General Assembly, or be eligible to hold any office of trust or profit in this State, until he shall have accounted for and paid into the treasury all sums for which he may be liable.

Sec. 24. No money shall be drawn from the treasury but in consequence of appropriations made by law.

Sec. 25. Each member of the first General Assembly under this Constitution shall receive three dollars per diem while in session; and the further sum of three dollars for every twenty miles traveled in going to and returning from the place where such session is held, by the nearest traveled route; after which they shall receive such compensation as shall be fixed by law; but no General Assembly shall have the power to increase the compensation of its own members. And when convened in extra session they shall receive the same mileage and per-diem compensation as fixed by law for the regular session, and none other.

Sec. 26. No law of the General Assembly, passed at a regular session, of a public nature, shall take effect until the fourth day of July next after the passage thereof. Laws passed at a special session shall take effect ninety days after the adjournment of the General Assembly by which they were passed. If the General Assembly shall deem any law of immediate importance, they may provide that the same shall take effect by publication in newspapers in the State.

Sec. 27. No divorce shall be granted by the General Assembly.

Sec. 28. No lottery shall be authorized by this State; nor shall the sale of lottery tickets be allowed.

Sec. 29. Every act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act which

shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.

Sec. 30. The General Assembly shall not pass local or special laws in the following cases:

For the assessment and collection of taxes for State, county, or road purposes;

For laying out, opening, and working roads or highways;

For changing the names of persons;

For the incorporations of cities and towns;

For vacating roads, town plats, streets, alleys, or public squares;

For locating or changing county seats.

In all the cases above enumerated, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State; and no law changing the boundary lines of any county shall have effect until upon being submitted to the people of the counties affected by the change, at a general election, it shall be approved by a majority of the votes in each county, cast for and against it.

Sec. 31. No extra compensation shall be made to any officer, public agent, or contractor, after the service shall have been rendered, or the contract entered into; nor shall any money be paid on any claim, the subject matter of which shall not have been provided for by pre-existing laws, and no public money or property shall be appropriated for local, or private purposes, unless such appropriation, compensation, or claim, be allowed by two-thirds of the members elected to each branch of the General Assembly.

Sec. 32. Members of the General Assembly shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear, (or affirm, as the case may be,) that I will support the Constitution of the United States, and the Constitution of the State of Iowa, and that I will faithfully discharge the duties of Senator, (or Representative, as the case may be,) according to the best of my ability." And members of the General Assembly are hereby empowered to administer to each other the said oath or affirmation.

Sec. 33. The General Assembly shall, in the years one thousand eight hundred and fifty-nine, one thousand eight hundred and sixty-three, one thousand eight hundred and sixty-five, one thousand eight hundred and sixty-seven, one thousand eight hundred and

sixty-nine, and one thousand eight hundred and seventy-five, and every ten years thereafter, cause an enumeration to be made of all the white inhabitants of the State.

Sec. 34. The number of Senators shall, at the next session following each period of making such enumeration, and the next session following each United States census, be fixed by law, and apportioned among the several counties according to the number of white inhabitants in each.

Sec. 35. The Senate shall not consist of more than fifty members, nor the House of Representatives of more than one hundred; and they shall be apportioned among the several counties and representative districts of the State according to the number of white inhabitants in each, upon ratios to be fixed by law; but no representative district shall contain more than four organized counties, and each district shall be entitled to at least one Representative. Every county and district which shall have a number of inhabitants equal to one half of the ratio fixed by law, shall be entitled to one Representative; and any one county containing in addition to the ratio fixed by law one half of that number, or more, shall be entitled to one additional Representative. No floating district shall hereafter be formed.

Sec. 36. At its first session under this Constitution, and at every subsequent regular session, the General Assembly shall fix the ratio of representation, and also form into representative districts those counties which will not be entitled singly to a Representative.

Sec. 37. When a Congressional, Senatorial, or Representative district shall be composed of two or more counties, it shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a Congressional, Senatorial, or Representative district.

Sec. 38. In all elections by the General Assembly, the members thereof shall vote viva-voce; and the votes shall be entered on the journal.⁷⁵

A comparison of the Article on the Legislative Department adopted by the Constitutional Convention of 1857 with that of the Constitution of 1846 shows that while a number of changes were made in construction, there were

⁷⁵ *Journal of the Constitutional Convention of the State of Iowa, 1857, Appendix, pp. 6-11.*

but few changes of material importance. The time for convening the General Assembly was changed from the first Monday in December to the second Monday in January following the election of its members; and the time of holding elections was changed from the first Monday in August to the second Tuesday in October, except on the years of the presidential election when it was to correspond with the latter date in order to avoid the unnecessary expense of a double election. Residence in the county for candidates to the General Assembly was changed from thirty to sixty days.

A number of new provisions were added to this article. The Governor must deposit all bills submitted to him within the last three days of the session with the Secretary of State within thirty days following the adjournment, together with his approval if he approved, or the reasons for objection if he disapproved. Section seventeen was entirely new. It required the assent of a majority of all members of each branch of the General Assembly for the passage of bills, as well as a vote upon the final passage of a bill immediately following its last reading, and the entry of the vote upon the journal. Section thirty was also new. It prohibited the General Assembly from passing local or special laws in a number of specifically enumerated cases where a general law could be made applicable. This has done away with a great deal of special legislation on a number of subjects. Up to the time that this provision was adopted, "cities had been incorporated with special charters differing from each other in many details, and even in very important particulars, so that the legislature could not pass laws relating to city government without taking into account many different special charter provisions."⁷⁶ Even at the present time four cities, namely, Davenport,

⁷⁶ McClain's *The Constitutional Convention and the Issues Before It*, p. 33.

Muscatine, Wapello, and Camanche, retain their special charters. Owing to this fact confusion frequently arises because of the necessity of providing special legislation for them. While the legislature possesses the authority to abolish these special charters, it has thus far failed to do so. Section thirty-one which was a new addition, prohibits the the payment of extra compensation "to any officer, public agent, or contractor, after the services shall have been rendered, or the contract entered into". Section thirty-five, which was also new in part, limited the number of Senators to fifty and the number of Representatives to one hundred. This section also prohibits the establishment of floating Representative districts. The provision in the Constitution of 1846 specifying the salary of the Governor and certain other State officials was entirely omitted in the Constitution drawn up by the Constitutional Convention in 1857.

AMENDMENTS TO THE ARTICLE ON THE LEGISLATIVE DEPARTMENT

The Constitution of Iowa drawn up by the Convention of 1857 remained in operation for a period of eleven years without amendment. Following the Civil War and the abolition of slavery, however, certain changes in the Constitution became necessary to make it conform with changes that were being proposed in the Federal Constitution. In accordance with the provision of the Constitution providing for its amendment the General Assembly of Iowa in regular session in 1866 proposed a series of amendments to the Constitution, among which were three relating to the Article on the Legislative Department.

The Amendments of 1868.—These three amendments respectively proposed to strike the word "white" out of sections thirty-three, thirty-four, and thirty-five of Article III so that the census enumeration of the State should in-

clude not only its white inhabitants but all of its inhabitants regardless of color, race, or previous condition of servitude. All of the inhabitants of the State were to be included also in the apportionment of Senators and Representatives. These amendments as introduced in the General Assembly in 1866 were agreed to by both houses and referred to the next General Assembly in accordance with the provisions for amendment laid down by the Constitution.⁷⁷

When the Twelfth General Assembly convened in 1868 the amendments agreed upon by the previous legislature were referred to them for their consideration, and all of the amendments pertaining to the Article on the Legislative Department were agreed upon.⁷⁸ Thus, two important steps in the process of amendment were completed and it now remained for the people to determine whether or not these amendments should be adopted. At the general election held on November 3, 1857, all of the above amendments carried by over twenty-four thousand majority.⁷⁹ All of this series of amendments, five in number, had to do with the political status of the negro in Iowa, and all were adopted by practically the same majority vote. By these amendments the political rights and privileges of people of color were greatly enlarged.

The Amendment of 1880.—In 1878 the Seventeenth General Assembly of Iowa proposed to remove from the Constitution the last restriction discriminating between free white male citizens and other male citizens of the United States. This was in point of fact a proposal to

⁷⁷ Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 260, 261.

⁷⁸ Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 261-265.

⁷⁹ Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 265-267; Erbe's *Constitutional Provisions for the Suffrage in Iowa* in *THE IOWA JOURNAL OF HISTORY AND POLITICS*, Vol. XXII, p. 211.

remove the last political distinction between the white citizens and citizens of color who inhabited the State. The proposal came in the form of an amendment to the Constitution, and proposed to strike from section four of the Article on the Legislative Department the words "free white" so that citizens of color would not be disqualified for membership in the House of Representatives if they met all the other requirements for this office. The amendment was passed by both houses of the General Assembly and received the official sanction of Governor John H. Gear on March 15, 1878.⁸⁰ The amendment was then referred to the Eighteenth General Assembly in 1880, adopted by it and approved on March 12, 1880. At the same time that this amendment was adopted by the Eighteenth General Assembly provision was made for its submission to the people for their sanction or rejection. On November 2, 1880, the people ratified the proposed amendment by a vote of 90,237 for adoption and 51,943 against adoption. The amendment was certified adopted on December 3, 1880.⁸¹

The Amendment of 1884.—During the session of the Nineteenth General Assembly in 1882, Warren S. Dungan, a Representative from Lucas County, proposed a series of amendments to the Constitution of Iowa. The first of these amendments related to changing the time of the regular election, and read as follows: "The general election for State, district, county, and township officers shall be held on the Tuesday next after the first Monday in November." This amendment passed the Nineteenth General Assembly as presented, and having received the Governor's approval was referred to the next General Assembly.⁸²

⁸⁰ *Laws of Iowa*, 1878, p. 178.

⁸¹ *Laws of Iowa*, 1880, p. 215; Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, p. 272; *Iowa Official Register*, 1923-1924, p. 36.

⁸² *Journal of the House of Representatives*, 1882, pp. 6, 54; *Laws of Iowa*, 1880, p. 180.

When the Twentieth General Assembly convened two years later, the amendment in question received the approval of both houses, and the official signature of the Governor was attached thereto on March 29, 1884. The remaining steps necessary for its submission to the electorate having been taken, the proposed amendment, along with three others of the series, was submitted to the voters at the regular election held on November 4, 1884, and was ratified by a vote of 89,342 for adoption, and 14,940 against.⁸³

Apparently there was little objection to this amendment which became section seven of the Article on Suffrage, for very little space was given to comment in the newspapers of the time upon the whole series of amendments. This may in part be accounted for by the fact that the people were more interested and absorbed in the national election which resulted in the choice of a Democratic president, than they were in their own local affairs. The chief reason, however, for the lack of newspaper comment, was, no doubt, the fact that the amendment in no way affected the fundamental rights of the people and was really a desirable change because it established uniformity in the time for holding elections. Prior to the adoption of this amendment State elections were held on the second Tuesday in October, except in the years of the presidential election, when such elections were held on the first Tuesday after the first Monday in November.⁸⁴

The Amendments of 1904.—During the session of the Twenty-ninth General Assembly in 1902 the question arose in regard to repealing two of the sections just discussed, namely, sections thirty-four and thirty-five, and in addition

⁸³ *Laws of Iowa*, 1884, p. 234; Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, p. 280; *Iowa Official Register*, 1923-1924, p. 37.

⁸⁴ Constitution of Iowa, Art. III, Secs. 3, 5, Art. IV, Sec. 2.

section thirty-six of the Article on the Legislative Department, and substituting new provisions in their respective places. Section thirty-four related to the apportionment of State Senators; section thirty-five dealt with the maximum number of Senators and Representatives and their apportionment according to population; and section thirty-six dealt with the ratio of representation. The General Assembly in 1902 passed an amendment to repeal these sections and to substitute the following in lieu thereof:

Section 34. The senate shall be composed of fifty members, to be elected from the several senatorial districts, established by law, and at the next session of the General Assembly held following the taking of the state and national census, they shall be apportioned among the several counties, or districts of the state according to population as shown by the last preceding census.

Sec. 35. The house of representatives shall consist of not more than one hundred and eight members. The ratio of representation shall be determined by dividing the whole number of the population of the state as shown by the last preceding state or national census, by the whole number of counties then existing or organized, but each county shall constitute one representative district and be entitled to one representative but each county having a population in excess of the ratio number as herein provided, of three-fifths or more of such ratio number, shall be entitled to one additional representative, but said addition shall extend only to the nine counties having the greatest population.

Sec. 36. The General Assembly shall, at the first regular session held, following the adoption of this amendment, and at each succeeding regular session held next after the taking of such census, fix the ratio of representation, and apportion the additional representatives, as hereinbefore required.⁸⁵

At the same time that the above amendment was introduced the Thirty-ninth General Assembly also proposed to add as section 16 to the Article on Schedule a provision for the holding of elections in November of the even numbered years. This proposal was referred to as the "biennial

⁸⁵ *Laws of Iowa*, 1902, p. 198.

election amendment'', although the elections for State officials were already biennial. What this amendment was really designed to do was to change the date of the biennial elections from the odd to the even numbered years. It also changed the date of the regular session of the General Assembly from January of the even numbered years to January of the odd numbered years.

Under the old scheme a State election was held in 1859, a national election in 1860, a State election in 1861, a State election in 1863, and so on. Accordingly, three elections were held in the State during every period of four years. According to the amendment proposed a State election would be held in 1906 instead of 1905, then in 1908 both State and national elections would occur, followed again in 1910 by a State election, and so on. Under this system only two elections would be held in the State during every period of four years, thereby making elections occur biennially.

By the provisions of the amendment now under discussion all Representatives and Senators who would otherwise be elected in the year 1905 would be elected at the same time in the year 1906. Likewise, all Senators who would regularly be chosen in the year 1907 would be elected in the year 1908. As a consequence, the terms of Representatives and Senators affected by these provisions were extended one year.

A proposal similar to this had been ratified by the people in 1900, but was declared unconstitutional by the Supreme Court in the case of *State ex rel. Bailey v. Brookhart*, 113 Iowa 250, owing to the fact that it was not entered in full upon the journal of the House.

The foregoing amendments as proposed and adopted by the Twenty-ninth General Assembly were referred in the regular manner to the Thirtieth General Assembly which convened in January, 1904, and were adopted by it. Provision was also made at this time for referring these

proposed amendments to the people at the general election to be held in the autumn. At this election which occurred on November 8, 1904, the amendment relating to the apportionment of State Senators and Representatives was ratified by a vote of 171,385 for, and 165,076 against adoption, a majority in favor of this amendment of only 6309. Out of the ninety-nine counties in the State, fifty-three voted against the amendment and but forty-six for it. At the same election the biennial elections amendment was ratified by a vote of 198,974 for, and 176,251 against adoption. Both amendments were certified adopted by Governor Albert B. Cummins on November 29, 1904.⁸⁶

The Amendment of 1916.—No other changes were made relating to the time for holding elections until 1916, when an amendment, introduced by Ulysses G. Whitney, Representative from Woodbury County, and approved by the Thirty-fifth and Thirty-sixth General Assemblies in a slightly modified form, was ratified by the people. This amendment proposed to substitute the following section for section seven of Article II of the Constitution of Iowa:

The general election for state, district, county and township officers in the year 1916 shall be held in the same month and on the same day as that fixed by the laws of the United States for the election of presidential electors, or of president and vice-president of the United States; and thereafter such election shall be held at such time as the general assembly may by law provide.⁸⁷

The traveling men of the State desired to have the date of election changed from Tuesday to Monday. They were nearly always compelled to leave home on Monday morning, and if they desired to vote on Tuesday, it was necessary for

⁸⁶ *Laws of Iowa*, 1904, p. 208; *Iowa Official Register*, 1905, pp. 377, 378, 424, 1923-1924, p. 38; Ramsay's *The Constitution of the State of Iowa and Amendments from 1857 to 1919*, p. 68.

⁸⁷ *Laws of Iowa*, 1913, p. 422.

them to return home. In many instances this was impossible. The State Constitution as amended in 1884 and 1904 fixed the date of election as the first Tuesday after the first Monday in November, and in order to change the time set for such election it would be necessary to amend the fundamental law of the State.

Moreover the traveling men of the United States were supporting a bill in Congress the object of which was to fix Monday as the day on which to hold national elections. Some of the Iowa legislators were assured that this bill would very likely pass, and if so, a double election would result in the State unless some provision was made for a change.

The original draft of the amendment proposed by Mr. Whitney was offered "with the purpose in view of so shaping our constitution that we would automatically follow the federal statutes in holding our state elections."⁸⁸

This amendment was adopted by the House of the Thirty-fifth General Assembly by a vote of sixty-six to four. Thirty-eight members were absent or failed to vote. In the Senate the proposed amendment was passed by a vote of thirty-four to one, fifteen members failing to record their vote upon the measure. The proposal was then sent to the Governor and received his approval on April 8, 1913.⁸⁹

The joint resolution was then referred to the Thirty-sixth General Assembly in 1915. It passed the House by a vote of ninety-three to two — thirteen members being absent or failing to vote. In the Senate the vote was twenty-eight for and twelve against adoption, ten members failing to vote. The joint resolution was then sent to the Governor for his sanction, and was approved by him on April 17,

⁸⁸ Quoted from a personal letter of Mr. Whitney to the author.

⁸⁹ *Journal of the House of Representatives*, 1913, pp. 1513, 1681, 1682; *Journal of the Senate*, 1913, pp. 1585, 1586; *Laws of Iowa*, 1913, p. 422.

1915. Following the receipt of the Governor's approval the proposed amendment was submitted to the voters and ratified at the regular election held on November 7, 1916.⁹⁰

The question is frequently raised, why has the power granted to the General Assembly under this amendment never been exercised? The answer to this lies largely in the fact that Congress has not changed the date of national elections and the Thirty-sixth General Assembly passed an act enabling voters who are absent from their place of residence on the day of election to vote by mail. This act is sometimes spoken of as the "Absentee Voters Law". It was passed in 1915 by the same General Assembly that approved the amendment granting to the General Assembly the right to fix the date of election.⁹¹ Both were undoubtedly intended to remedy the same evil. Since one has served the purpose, the other has not been used.

Proposed Amendment of 1925.—Since the adoption of the Nineteenth Amendment to the Federal Constitution declared to be effective on August 26, 1920, the question has come up in Iowa as to whether women, who under its provisions enjoy all of the privileges of qualified electors, are entitled to hold a seat in the General Assembly of the State. Section four of the Article on the Legislative Department in the Constitution states that to qualify for membership in the House of Representatives, a person must "be a free male citizen of the United States". Section five of this same article provides that to qualify for membership in the Senate one "shall be twenty-five years of age, and possess the qualifications of Representatives as to residence and citizenship." These provisions of the Constitution

⁹⁰ *Journal of the House of Representatives*, 1915, pp. 569, 1931, 1993; *Journal of the Senate*, 1915, pp. 1696, 1697, 1869; *Laws of Iowa*, 1915, pp. 263, 264; *Iowa Official Register*, 1923-1924, (Note) p. 38.

⁹¹ *Laws of Iowa*, 1915, pp. 203-207, 263, 264.

have generally been interpreted as excluding women from membership in the General Assembly, although all other public offices were automatically thrown open to them when they became electors.⁹²

Having this constitutional limitation upon the political equality of men and women in mind, Governor N. E. Kendall in addressing the Fortieth General Assembly of Iowa on January 11, 1923, said, "I earnestly urge that the first measure adopted by you may be for the removal from constitution and statute of every discrimination there existing against the enjoyment by women of every prerogative now exercised by men."⁹³

Following the recommendation of the Governor, S. L. Graham of Wapello County and A. O. Hauge of Polk County introduced a joint resolution in the House of Representatives which proposed to strike out the word "male" from section four of the Article on the Legislative Department. The resolution as introduced was somewhat amended, retaining however, its intent. It was then passed by both houses and approved by the Governor on February 23, 1923.⁹⁴ This proposed amendment was submitted to the Forty-first General Assembly which convened on the second Monday in January, 1925. It was passed by both houses and was approved by the Governor on March 9, 1925. Provision was made for its submission to the voters at the general election to be held in November, 1926.

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⁹² Erbe's *Constitutional Provisions for the Suffrage in Iowa* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XXII, pp. 215, 216.

⁹³ *Journal of the House of Representatives*, 1923, pp. 153, 162.

⁹⁴ *Journal of the House of Representatives*, 1923, pp. 264, 284, 564, 706; *Journal of the Senate*, 1923, pp. 430, 503, 504, 633; *Laws of Iowa*, 1923, p. 427.

SOME PUBLICATIONS

History of the American Frontier, 1763-1893. By Frederic L. Paxson. Boston and New York: Houghton Mifflin Company. 1924. Pp. 598. Maps. In this volume Professor Paxson has prepared an able and valuable synthesis of the history of the American frontier. He has incorporated not only the results of his own extensive studies in this field but has brought together the findings of many other students of western history of recent years. The year 1763 is taken as the starting point for the chronicle and the year 1893, by which time the frontier as such had disappeared, brings the narrative to an end. Reasons for the persistent westward movement are clearly established, and the results explained. Students of American history, especially of the history of the West, will find this book a most useful contribution to the literature on the subject. The author has succeeded in showing, as he indicates in the preface, the proportions of the whole story. The volume contains well selected maps, and the footnote references constitute a useful list of books and studies on various phases of the frontier. The index is satisfactory, and the book is attractively printed and bound.

Nevada State Historical Society Papers. Reno: The Nevada State Historical Society. 1924. Pp. 503. Maps. Plates. This is volume four of the series begun by the Nevada Historical Society in 1913, and covers the biennium 1923-1924. It contains among other papers interesting reminiscences of pioneer days in Nevada, a review of the so-called "Pyramid Indian War", and a carefully prepared monograph on *The Development of Reno in Relation to Its Topography*, by Annie Estelle Prouty. One section is devoted to the publication of prize essays in a contest for high school pupils similar in plan to the contest in local community history sponsored by the Iowa Federation of Women's Clubs and the State Historical Society of Iowa last year. The volume is an interesting contribution to the annals of Nevada.

American Indian Poetry, by Eda Lou Walton and T. T. Waterman, is an article in the January-March issue of the *American Anthropologist*.

The *Thirty-eighth Annual Report of the Bureau of American Ethnology* contains a long paper entitled *An Introductory Study of the Arts, Crafts, and Customs of the Guiana Indians*, by Walter Edmund Roth.

The Medford High School Under Lorin L. Dame, by Ruth Dame Coolidge, is an interesting article on local history which appears in *The Medford Historical Register* for December, 1924.

The Agricultural Situation in the United States is the general title of the articles published in the January issue of *The Annals of the American Academy of Political and Social Science*.

Myths of American History and *The English Ancestry of Baron George Washington*, the latter by T. Pape, are two of the articles in the January number of *Tyler's Quarterly Historical and Genealogical Magazine*.

Early Frontier Democracy in the First Kentucky Constitution, by E. Merton Coulter, is an article of interest to historians, published in the December, 1924, issue of the *Political Science Quarterly*.

The January number of the *Historical Collections of the Essex Institute* contains, among other articles, continuations of *Blockade Running During the Civil War*, by Francis B. C. Bradley, and *Salem Vessels and Their Voyages*, by George Granville Putnam.

Calling the Secession Convention in Arkansas, by David Y. Thomas, is an article of historical interest which appears in *The Southwestern Political and Social Science Quarterly* for December, 1924. *Need and Opportunities for Anthropological Research in the Southwest*, by J. E. Pearce, is another article in this number.

Mecklenburg, by Charles A. Shriner; a continuation of *Glimpses into Ancient American Discoveries*, by Jacques J. Heit; *The French in the Ohio Valley*, by George P. Donehoo; and *Long Island — The*

Daughter of Atlantis, by Henry Isham Hazelton, are four of the articles in the January issue of *Americana*.

Amherstburg, Terminus of the Underground Railroad, by Fred Landon; *A Carpet-Bagger in South Carolina*, by Louis F. Post; and *The Leclerc Instructions*, by Carl Ludwig Lokke, are the three articles in *The Journal of Negro History* for January. This issue contains the *Proceedings of the Ninth Annual Meeting of the Association for the Study of Negro Life and History*.

The April-July, 1924, number of the *Smith College Studies in History* contains a monograph by J. Fred Rippey and Angie Debo, *The Historical Background of the American Policy of Isolation*. Pauline Safford Reylea is the author of a monograph on the *Diplomatic Relations Between the United States and Mexico Under Porfirio Diaz, 1876-1910*, which appears in the number for October, 1924.

The Journal of American History for October-December, 1923, contains the following articles: *How New York Became New Orange*, by Edward Niles; "Stratford," *West Moreland County, Virginia*, by Mrs. S. D. Kennedy; *The Demands of the Twentieth Century*; a continuation of *My Journey "Out West"*, by E. L. Peckham; a third installment of *Four Days*, a story of Lincoln's burial, by Mrs. Herman Riggs; and a continuation of the articles by W. Harrison Bayles and Frank Allaben entitled *A History of Banks and Banking and of Banks and Banking in the City of New York*. In the issue for January-March, 1924, the articles on banks and the journey to the West are continued. In addition there are the following: *Old Taverns of New York*, by W. Harrison Bayles; *Letter of Puritan Maiden*, by Ruth Starbuck Wentworth; *Adventures of Colonel John Floyd*, by Thomas B. Robertson; *Historic Paintings in America*; *The Fur Traders*, by Joseph Mills Hanson; and *Frontier Life in Southwest Kansas*. The narrative by E. L. Peckham contains a description of travelling in Iowa in 1857.

WESTERN AMERICANA

Making the Texas Constitution of 1876, by Seth Shepard McKay, has been published by the University of Pennsylvania.

Outline and References for Oklahoma History, by Edward Everett Dale and Morris L. Wardell, contains in pamphlet form a bibliographical reference guide for teachers and students of Oklahoma history.

The Blazed Trail and the Steel Rail, an address by Leon C. Prince, is printed in the *Proceedings of the Wyoming Commemorative Association* for 1924.

Charles Kettelborough and Frederic H. Guild are the authors of a study, *Analysis of the Finances of the State of Indiana, 1913-1923*, which has been published as a recent number of the *Indiana University Studies*.

The Church in Omaha, by Carl T. Self; *American Communities*; and *The Icarian Community of Nauvoo* are three short papers of historical interest in the *Journal of History* for January.

The Expansionist Movement in Texas, 1836-1850, a monograph by William Campbell Binkley, has been published recently as volume thirteen of the *University of California Publications in History*.

The April number of the *University of California Chronicle* contains an article relative to *The Book of Mormon*, by Merritt Y. Hughes, entitled *A Neglected Document in American Frontier History*.

The Greatest Swordsman in America — Colonel Thomas Stephens — by Elizabeth Stephens Carson, and *Wisconsin's Rival Houses*, by May L. Bauchle, are two articles of historical interest in *The Wisconsin Magazine* for November-December, 1924.

The Mansion of St. Martin, a short paper by Milo M. Quaife, is the chief contribution in the *Burton Historical Collection Leaflet* for January. The issue for March contains a biography of John Askin, by Clarence M. Burton.

The January number of *The Colorado Magazine* contains *The Conifers or "Evergreens" of Colorado*, by Ellsworth Bethel; *Early Mail Service to Colorado, 1858-60*, by L. R. Hafen; *Primitive Colo-*

radoans, by J. A. Jeancon; *An Appreciation of William G. Evans*, by A. J. Fynn; *Joseph W. Bowles*, by Albert B. Sanford; and *The Story of a Colorado Pioneer — Mrs. Charles A. Finding*, by Evelyn Bradley.

The November, 1924, number of *The Quarterly Journal of the University of North Dakota* contains, among others, the following papers and articles: *The Problem of Enacting Agricultural Legislation*, by O. B. Burtness; *Third Parties*, by C. O. Johnson; *The Proposed Roosevelt Memorial Park*, by A. H. Yoder; and *The Biology of North Dakota*, by R. T. Young. *Icelandic Pioneers in North America*, by J. T. Thorson; and *The Desertion of Onate's Colony from New Mexico*, by George P. Hammond, are two articles of historical interest found in the January, 1925, number.

IOWANA

The Monticello State Bank recently issued an attractive little booklet commemorating the founding of the bank on January 10, 1875.

A memorial volume has been issued by the Iowa State College of Agriculture and Mechanic Arts in honor of Dean Edgar Williams Stanton who died on September 12, 1920.

The Journal of the Iowa State Medical Society for February contains a biographical sketch of an Iowa physician, *Recollections of Edward Hornbrook — a Medical Chevalier*, by W. E. Sanders.

An account of the restoration of the home of Antoine LeClaire at Davenport is given in the *Rock Island Magazine* for March. This number contains also *The History of Railroad Building in Iowa*, by Mina Monette.

Pages from Bygone Days in and about Drakeville, Iowa, by George W. Clarke; *Iowa Suffrage Memorial Commission; Scenic, Scientific, and Historic Iowa Areas*, by Edgar R. Harlan; and *An Autobiographical Sketch of Governor Boies* are the four chief contributions to the *Annals of Iowa* for July, 1924.

The March issue of the *Grand Lodge Bulletin of the Iowa Masonic Library* is a memorial number in honor of Newton R. Parvin

who died at Cedar Rapids on January 16, 1925. Mr. Parvin was a son of Theodore S. Parvin and was born at Muscatine, Iowa, on July 5, 1851. He was the librarian of the Iowa Masonic Library, editor of the Grand Lodge Bulletin, and had served as Grand Secretary of the Grand Lodge of Iowa since 1901.

The January issue of *Autumn Leaves* contains a descriptive and historical sketch by S. A. Burgess — *The Missouri River* — and a brief biography of William McKinley, by Edward Rannie. A sketch of the life of George Washington, by the same author is included in the February number.

SOME RECENT PUBLICATIONS BY IOWA AUTHORS

Bartow, Edward,

The Development of Sewage Treatment by the Activated Sludge Process (The American City, March, 1925).

Blackmar, Beatrice,

Westward — How? (Liberty, February 14, 1925).

Bolton, Frederick E.,

Idealism in Education (Scribner's Magazine, January, 1925).

Bordwell, Percy,

The Iowa Contingent Remainder Act (Iowa Law Bulletin, January, 1925).

Brown, Bernice,

Mother Knows Best (The Cosmopolitan, April, 1925).

Brown, Mrs. S. Joe,

The Negro's Contribution to the Development of Our Commonwealth (Bulletin of Iowa State Institutions, October, 1924).

Case, Clarence M.,

Durkheim's Educational Sociology (Journal of Applied Psychology, September-October, 1924).

Chamberlain, William,

Federal Taxation of Income From Municipally Owned Utilities or Securities Issued for Their Purchase (Iowa Law Bulletin, November, 1924).

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Chinn, Keith R.,

The Iowa Memorial Union (The Transit, February, 1925).

Clock, S. A.,

State Institutions — Support Provided and Service Expected
(Bulletin of Iowa State Institutions, October, 1924).

Cook, Wayne G.,

The Special Appearance in Iowa (Iowa Law Bulletin, January, 1925).

Cottrell, Louise,

A Social-Working State University (The Survey, February 15, 1925).

Cox, Glen,

Engineers' R. O. T. C. Camp at Fort Snelling (The Transit, February, 1925).

Ellis, Amanda M.,

Horace's Influence on Dryden (Philological Quarterly, January, 1925).

Erbe, Carl H.,

Amendment of the Iowa Constitution (The Iowa Journal of History and Politics, January, 1925).

Eriksson, Erik McKinley,

The Boyd Wilkinson Case (The Palimpsest, March, 1925).

The Disappearing Voter (The Kiwanis Magazine, January, 1925).

Ficke, Arthur Davison,

Out of Silence. New York: Alfred A. Knopf. 1925.

Finney, Claude L.,

Drayton's "Endimion and Phoebe", and Keats' "Endymion"
(Publications of the Modern Language Association of America, December, 1924).

Folwell, John,

Rubber, Before and After 1844 (The Transit, December, 1924).

- Frederick, John T.,
Nelson Antrim Crawford: Poet and Teacher (The Midland, November, 1924).
- Galer, Laura B.,
The Woman's Club in the Service of the State Board of Control (Bulletin of Iowa State Institutions, July, 1924).
- Gordon, Ronald,
Martins at Play (Forge, January-February, 1925).
My Old Woman (Forge, January-February, 1925).
The Ready-Made Hat (Forge, January-February, 1925).
- Griffith, Helen Sherman,
The Lane. Philadelphia: Penn Publishing Co, 1925.
- Hart, Hornell,
Occupational Differential Fecundity (The Scientific Monthly, November, 1924).
- Hemsworth, Mrs. L. C.,
The Training the State Is Giving the Boy and the Girl as Seen by a Club Woman (Bulletin of Iowa State Institutions, July, 1924).
- Hills, Elmer,
Income Tax Publicity (Journal of Business, December, 1924).
- Holbrook, Weare,
Jumpers (O'Brien's "Best Short Stories of 1924").
Many Happy Returns (O'Brien's "Best Short Stories of 1924").
The Casonova Shanty (O'Brien's "Best Short Stories of 1924").
- Hollingsworth, Horace,
Family Case Work with Reference to Juvenile Problems (Bulletin of Iowa State Institutions, October, 1924).
- Horn, Ernest, (Joint author)
The Learn to Study Readers, Book III. Boston: Ginn and Co. 1925.

Hough, Emerson,

The Ship of Souls. New York: D. Appleton and Co. 1925.

House, R. T., (Joint author)

Compendio de Historia Hispano-Americana. Chicago: Scott Foresman and Co. 1925.

Tamayo y Baus, M., Un Drama Nuevo. Boston: Allyn and Bacon. 1925.

Ibershoff, C. H.,

Another Source of Bodmer (Modern Language Notes, November, 1924).

Bodmer's Borrowings from an Italian Poet (Modern Language Notes, February, 1925).

Kwalwasser, Jacob,

Jewish Folk-Songs and What They Reveal (Musical Quarterly, January, 1925).

Lewis, James O.,

Reconstruction at Antlers' (Outdoor America, August, 1924).

A Terrible Turk (Outdoor America, December, 1924).

Loomis, William W.,

Newspaper Law. Salt Lake City: Porte Publishing Co. 1925.

McCash, Buell,

Ex-Delicto Liability of Counties in Iowa (Iowa Law Bulletin, November, 1924).

Mahan, Bruce E.,

Iowa at the New Orleans Fair (The Palimpsest, March, 1925).

Maulsby, William S.,

Getting the News. New York: Harcourt, Brace, and Co. 1925.

Mead, Elwood,

Reclamation Act Is Outgrown (The Iowa Engineer, January, 1925).

Nagler, Floyd A.,

Hydraulic Records in Iowa (The Transit, December, 1924).

- Nutting, C. C.,
Ascending Humanity. Iowa City: The State University of Iowa. 1925.
- Patton, Odis K.,
The Iowa Code of 1924 (Iowa Law Bulletin, November, 1924).
- Piper, Edwin Ford,
Chimney Talk (Poetry, February, 1925).
Obiter Dicta (Poetry, February, 1925).
Indian Council (Poetry, February, 1925).
Trail Talk (Poetry, February, 1925).
Six Yoke (Poetry, February, 1925).
- Pollock, Ivan L.,
Historical Background of the County in Iowa (The Iowa Journal of History and Politics, January, 1925).
- Pragman, I. H.,
Industrial Education as a Profession (The Transit, February, 1925).
- Quick, Herbert,
There Came Two Women. Indianapolis: Bobbs-Merrill Co. 1924.
- Rall, Harris F.,
I Believe (Popular Religion Leaflets). Chicago: American Institute of Sacred Literature. 1924.
- Reuter, Bertha Ann,
Anglo-American Relations During the Spanish-American War. New York: Macmillan Co. 1924.
- Richards, Harry S.,
Law of Private Corporations. American Case Book Series. St. Paul: West Publishing Co. 1924.
- Robeson, George F.,
Manual Lisa (The Palimpsest, January, 1925).
Fur Trade in Early Iowa (The Palimpsest, January, 1925).
Life Among the Fur Traders (The Palimpsest, January, 1925).

- Russell, Frances Theresa,
Browning the Artist in Theory and Practice (University of California Chronicle, January, 1925).
- Sabin, Edwin Legrand,
White Indian. Philadelphia: Jacobs and Co. 1925.
- Seagrave, Sadie,
Quiet Lady (Palms, December, 1924).
- Shepard, Vance,
Life Insurance (Journal of Business, December, 1924).
- Shinn, Byron,
United States' Second Largest Saw Mill (The Transit, February, 1925).
- Shultz, Gladys Denny,
Spoiling Eleanor (Better Homes and Gardens, February, 1925).
- Smith, Grace P.,
Iowa Contributes to the Fur Market (The American Furrier, February, 1925).
- Stefansson, Vilhjalmur,
The Adventure of Wrangel Island. New York: Macmillan Co. 1925.
- Stewart, George Walter,
The Value of Inconsistency (Reprinted from The Scientific Monthly, February, 1925).
- Stoner, Dayton,
Observations and Banding Notes on the Bank Swallows (The Auk, Vol. XLII, pp. 86-95).
The Toll of the Automobile (Science, January 16, 1925).
- Swisher, Jacob A.,
The Code of 1924 (The Iowa Journal of History and Politics, January, 1925).
Kate Shelley (The Palimpsest, February, 1925).

Sylvester, Mrs. R. H.,

Prophet, What of Tomorrow? (Iowa Federation News, November-December, 1924).

Turner, Ralph E.,

America in Civilization. New York: Alfred A. Knopf and Co. 1925.

Van Dine, W. Warren,

The Poet (O'Brien's "Best Short Stories of 1924").

Van Ek, Jacob,

The Legislation of the Extra Session of the Fortieth General Assembly of Iowa (The Iowa Journal of History and Politics, January, 1925).

Von Krog, O. S.,

The Press, the Public, and State Institutions (Bulletin of Iowa State Institutions, July, 1924).

Wallace, Henry A.,

Supply and Price Interactions in Farm and City Products (The Annals of the American Academy of Political and Social Science, January, 1925).

Wallace, Henry C.,

A National Agricultural Program (The Annals of the American Academy of Political and Social Science, January, 1925).

Wambaugh, Eugene,

A Selection of Cases on Agencies (Second Edition). Cambridge: Harvard University Press. 1924.

Ward, Duren J. H.,

Darwin and Evolution. Denver: Up the Divide Publishing Co. 1925.

Hymns of The Larger Outlook. Denver: Up the Divide Publishing Co. 1924.

The Origin of Mind. Denver: Up the Divide Publishing Co. 1924.

Wassam, Clarence W.,

At the Wimbledon Fair (Journal of Business, December, 1924).

Watters, Dennis Alonzo,

Yesterday, To-day, and Forever. Portland: Published by the author. 1925.

Weeks, Raymond,

The Fat Women of Boone (The Midland, January 1, 1925).

On the Road to the Big Blue (The Midland, January 1, 1925).

The Snakes of Boone (The Midland, January 1, 1925).

"*Thou Canst Not Say I Did It*" (The Midland, January 1, 1925).

Two Gentlemen from Indiany (The Midland, January 1, 1925).

Weir, Kenneth J.,

Pittsburgh and Its Opportunities (The Transit, January, 1925).

Weller, Charles Heald,

Athens and Its Monuments (Second Edition). New York: Macmillan Co. 1925.

Williams, Mark W.,

Are British Theological Schools Efficient? (The Homiletic Review, February, 1925).

Willson, Dixie,

Clown Town. Doubleday, Page, and Co. 1924.

Wilson, Ben Hur,

The Eclipse of 1869 (The Palimpsest, February, 1925).

Wood, Patricia,

The Spirit Lake Massacre (Rock Island Magazine, January, 1925).

SOME RECENT HISTORICAL ITEMS IN IOWA NEWSPAPERS

A sale bill of 1849, in the *Lacona Ledger*, December 12, 1924, and the *Maquoketa Excelsior*, January 20, 1925.

Christmas in Keokuk one hundred years ago, in the *Keokuk Citizen*, December 19, 1924.

- Sketch of the career of Captain B. F. Crail, Civil War veteran, in the *Fairfield Ledger*, December 15, 1924, and the *Keokuk Gate City*, December 16, 1924.
- Going by covered wagon from Indiana to Iowa in November, 1854, by Geo. F. Parker, in the *Indianola Tribune*, December 16, 1924, and the *Des Moines Register*, January 4, 1925.
- History of pioneers in Davis County, in the *Bloomfield Democrat*, December 25, 1924.
- Old newspaper tells of Washington's death, in the *Des Moines Capital*, December 25, 1924.
- Helen Larrabee's story of her grandmother, in the *West Union Union*, December 25, 1924, and the *Clermont Enterprise*, January 2, 1925.
- County seat war between Davenport and Rockingham, by August P. Richter, in the *Davenport Times*, December 27, 1924.
- Sketch of the career of General John Y. Stone, in the *Glenwood Opinion*, December 31, 1924, and the *Glenwood Tribune*, January 1, 1925.
- Relocating the capital, in the *Des Moines Tribune*, December 31, 1924, and the *Knoxville Express*, January 8, 1925.
- Indian prisoners at Camp McClellan, in the *Davenport Democrat*, December 31, 1924.
- Old Fort Armstrong, in the *Davenport Democrat*, December 31, 1924.
- Sketch of Chief Keokuk, in the *Oxford Leader*, January 1, 1925.
- Bogus Cave as a lair for outlaws, by L. A. Anderson, in the *Anamosa Eureka*, January 1, 1925.
- Pioneer days in Des Moines, in the *Des Moines Plain Talk*, January 1, 1925.
- Sketch of the life of Daniel Gonder, Mexican War veteran, in the *Perry Tribune*, January 8, 1925.
- Preserving historical sites, in the *Davenport Times*, January 14, 1925.

Sketch of the life of Elizabeth Rock, a Cedar Rapids pioneer, in the *Cedar Rapids Gazette*, January 14, 1925.

A bit of State history, in the *Chariton Herald-Patriot*, January 15, 1925.

The settlement of Miles, in the *Sabula Gazette*, January 22, 1925.

Three days in an Iowa blizzard of 1872, in the *Rock Rapids Review*, January 22, 1925.

Keosauqua's Civil War glee club, in the *Keosauqua Republican*, January 22, 1925.

Sketch of the life of Jacob Eich, a ninety-five year old pioneer, in the *Keosauqua Barometer*, January 22, 1925, and the *Keosauqua Republican*, January 29, 1925.

Sketch of the life of J. W. Corbin, a Delhi pioneer, in the *Manchester Press*, January 22, 1925.

Pioneer days in Taylor County, by Mrs. M. E. Ledgerwood, in the *Blockton News*, January 22, 1925.

Recollections of early days in Black Hawk County, in the *Waterloo Courier*, January 26, 1925.

Grasshopper days in Ida County, in the *Ida Grove Pioneer*, January 28, 1925.

A collection of fire arms, in the *Waterloo Courier*, January 29, 1925.

An original Washington letter owned by a Des Moines resident, in the *Des Moines Capital*, January 30, 1925.

Early settlers and settlements of Iowa, in the *Keokuk Citizen*, January 30, February 6, 13, 20, 1925.

Letters written during the Civil War, in the *Keokuk Citizen*, January 30, 1925.

When elephants lived in Iowa, in the *Des Moines Register*, February 1, 1925.

Pilots of the rapids, in the *Davenport Democrat*, February 1, 1925.

A burial place of the pioneers, by E. D. Carter, in the *Perry Chief*, February 2, 1925.

Sketch of the life of Louise Octavia De Louis, descendant of Chief Keokuk, in the *Keokuk Gate City*, February 2, 1925.

A view of yesterday, in the *Fairfield Ledger*, February 3, 1925.

Passing of stone schools, in the *Fayette Leader*, February 5, 1925, the *Hull Index*, February 6, 1925, and the *Holstein Advertiser*, February 19, 1925.

Indian lore in Iowa, in the *Farley Advertiser*, February 5, 1925.

Sketch of the life of J. D. Sketchley, member of the border brigade of 1857, in the *Webster City Journal*, February 5, 1925.

An almanac one hundred years old, in the *Lacona Ledger*, February 6, 1925.

Sketch of the career of George H. Frasher, veteran newspaper editor, in the *Fairfield Ledger*, February 7, 1925.

Letters Lincoln wrote to Iowans, by Phil Strong, in the *Des Moines Register*, February 8, 1925.

When Abraham Lincoln came to Iowa, by Charles Keyes, in the *Des Moines Register*, February 8, 1925.

Iowa's first capitol restored, in the *Des Moines Register*, February 8, 1925.

Disbanding of the John J. Stillman Post of the G. A. R. at Waukon, in the *Ida Grove Record-Era*, February 11, 1925.

Early Cresco history, in the *Cresco Times*, February 11, 1925.

Northwest Iowa in pioneer days, in the *Ida Grove Champion*, February 11, 1925.

Reminiscences of Abraham Lincoln, in the *Clinton Advertiser*, February 12, 1925.

A Lincoln letter to James W. Grimes, in the *Davenport Times*, February 14, 1925.

The first Iowa soldier killed in the Civil War, in the *Oskaloosa Herald*, February 18, 1925.

Rossville's last Civil War veteran, in the *Waukon Democrat*, February 18, 1925.

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Recollections of grasshopper days, by Elbert Latham, in the *Sioux City Journal*, February 18, 1925.

Early days in Iowa, in the *Woodbine Twiner*, February 19, 1925.

Pioneer days, by Louis F. Schultz, in the *Malcom Leader*, February 20, 1925, and the *Newton News*, March 6, 1925.

Letter written by George Washington at Valley Forge, by Phil Strong, in the *Des Moines Register*, February 22, 1925.

Horse stealing was popular in the sixties, in the *Albia Union-Republican*, February 23, 1925.

Sketch of the life of Judge William S. Hamilton, in the *Keokuk Gate City*, February 24, 1925, and the *Fort Madison Democrat*, February 26, 1925.

Early days near Unionville, in the *Centerville Iowegian*, February 24, 1925.

The historic Le Claire home, in the *Centerville Iowegian*, February 25, 1925, and the *Estherville Vindicator and Republican*, March 4, 1925.

Early history of Clay County, by R. A. Coates, in the *Spencer Reporter*, February 25, 1925.

Old timers in Greene County, in the *Jefferson Bee*, February 25, 1925.

A Civil War story, by A. J. Kingery and A. S. Escelman, in the *Seymour Herald*, February 26, 1925.

Sketch of the life of Judge A. W. Wilkinson, in the *Winterset News*, February 26, 1925.

Was Winterset on the John Brown route, in the *Winterset Madisonian*, February 26, 1925.

Life of Chief Keokuk, in the *Keosauqua Barometer*, February 26, 1925.

Grundy County seventy years ago, in the *Grundy Center Register*, February 26, 1925.

More Mississippi River history, in the *Bellevue Leader*, February 26, 1925.

Historic South Bluff Park, in the *Bellevue Leader*, February 26, March 12, 19, 1925.

Washington's birthday celebration in Keokuk in 1856, in the *Keokuk Citizen*, February 27, 1925.

Seven brothers and sisters who came from Holland in 1856 are still living in Iowa, in the *Sioux City Journal*, February 27, 1925.

Sketch of the life of Julia Karwarth, a resident of Davenport for eighty-one years, in the *Davenport Democrat*, March 1, 1925.

A pioneer's first year in Emmet County, in the *Estherville Vindicator and Republican*, March 4, 1925.

An Indian scare, by E. E. Brown, in the *Lake Mills Graphic*, March 4, 1925.

A vanished educational institution, in the *Cascade Pioneer*, March 5, 1925.

Early days in southwestern Iowa, in the *Red Oak Express*, March 5, 1925.

Sketch of the career of Brigadier General William L. Davis, in the *Cedar Rapids Gazette*, March 5, 1925.

Building of the railroads in Iowa, in the *Blainstown Press*, March 5, 1925.

The first steamer on the upper Mississippi, by Captain Fred A. Bill, in the *Sabula Gazette*, March 5, 12, 1925.

Sketch of the life of A. J. Edwards, a Black Hawk County pioneer attorney, in the *Waterloo Tribune*, March 7, 1925.

Early days in Grinnell, in the *Grinnell Herald*, March 10, 1925.

A story of pioneer days, by Greenberry Luck, reprinted from the *Parkersburg Eclipse*, in the *Greene Record*, March 11, 1925.

Early settlers at the mercy of thieves, in the *Newell Mirror*, March 5, 12, 1925.

Pioneer history of Adair County, by Marjorie Jacobson, in the *Orient Independent*, March 12, 1925.

When Keokuk had a fort, in the *Keokuk Citizen*, March 13, 1925.

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The first city directory of Burlington, in the *Burlington Gazette*, March 12, 1925.

Civil War reminiscences, by C. H. Wegerslav, reprinted from the *Sioux City Journal* in the *Storm Lake Tribune*, March 12, 1925.

A Black Hawk monument, in the *Bloomfield Democrat*, March 12, 1925.

Prehistoric weapons found in Dallas County, in the *Guthrie Center Guthrian*, March 12, 1925, and the *Madrid Register-News*, March 12, 1925.

Iowa politics fifty years ago, in the *Ames Tribune*, March 14, 1925.

Fifty years as a printer, in the *Ames Tribune*, March 14, 1925.

Iowa returns captured Dixie flag, in the *Des Moines Register*, March 15, 1925.

HISTORICAL SOCIETIES

PUBLICATIONS

Volume two of the *Annual Report of the American Historical Association* for 1919 contains a large collection of the papers of Moses and Stephen F. Austin, edited by Eugene C. Barker. These make two large volumes.

The Life of William Dummer Powell, First Judge at Detroit and Fifth Chief Justice of Upper Canada, by William Renwick Riddell, has been published recently by the Michigan Historical Commission.

The Quebec Fur-traders and Western Policy, 1763-1774, by Marjorie G. Reid, is an article in the March issue of *The Canadian Historical Review*, which is of interest to middle western historians.

The Fur Traders; The Ames Monument; and In Memoriam, Joseph Maull Carey are three of the many short articles in the January number of the *Quarterly Bulletin of the Wyoming State Historical Department*.

Abraham Lincoln's Ancestry, an address delivered by William E. Barton before the Sixth Annual Indiana History Conference, is published in the *Indiana History Bulletin* for January.

Early American Shoe Buckles, an original article by Harald W. Ostby, and a continuation of *Indian Implements Found in Rhode Island* are two of the papers in the January number of the *Rhode Island Historical Society Collections*.

Publications of the Illinois State Historical Library and Society, by Jessie Palmer Weber, has been reprinted from the *Journal of the Illinois State Historical Society* for October, 1924.

Belt Plates and Badges of the British Army in the American Revolution, by William L. Calver, and *Uniforms Worn in the American Revolution* are two papers included in *The New-York Historical Society Quarterly Bulletin*.

Corrêa da Serra, by Joseph Eugene Agan; *A Diary of 1822*; and a continuation of *The Second Troop Philadelphia City Cavalry*, by W. A. Newman Dorland, are three papers printed in *The Pennsylvania Magazine of History and Biography* for January, 1925.

Number twenty-nine of the publications of the Historical Society of New Mexico contains a monograph by Ralph Emerson Twitchell entitled *The Palace of the Governors*. A shorter article by the same writer is *La Villa Real de Sante Fe de San Francisco*.

The January number of *The Quarterly Journal of the New York State Historical Association* contains an account of the twenty-fifth annual meeting, held at Buffalo on October 1-3, 1924; an address by Frank H. Severance; and a paper by Jane Mead Welch on *Buffalo and the Presidents*.

The November, 1924, number of the *Minnesota History Bulletin* contains two articles — *The People's Party in Minnesota*, by John D. Hicks, and *New Light on Red River Valley History*, by Grace Lee Nute. There is also an account of the State Historical Convention at Detroit on June 20 and 21, 1924.

A Survey of Early Newspapers in the Middle Western States, by George W. Purcell; *Parke County in 1924*, by Mrs. H. H. Dooley; and concluding installments of *Early Vevay*, by Perret Dufour, and *Interurban Railroads of Indiana*, by Glen A. Blackburn, are the four contributions which make up the *Indiana Magazine of History* for December, 1924.

The *Historical and Philosophical Society of Ohio Publications* for 1924 contains the annual report of the Society for 1924 and a seventh installment of *Selections from the Gano Papers*. These papers contain valuable lists of Ohio soldiers at the time of the *War of 1812* and the period just following it.

The Virginia Magazine of History and Biography for January contains a biography of Henry Norwood, Treasurer of Virginia, 1661-1673, by Fairfax Harrison; a continuation of the *Virginia Council Journals*; and another installment of *The Virginia Clergy*, edited by G. McLaren Brydon.

Almonte's Statistical Report on Texas, 1835, translated by Carlos E. Castaneda; *The Federal Indian Policy in Texas, 1845-1860*, by Gena Clara Koch; and the fourteenth installment of *The Bryan-Hayes Correspondence*, edited by E. W. Winkler, make up the January number of the *Southwestern Historical Quarterly*.

The Rochester Historical Society has recently issued Volume III of its *Publication Fund Series*, edited by Edward R. Foreman. This is a large volume of over four hundred pages and contains numerous papers on various topics connected with the history of Rochester, New York.

Michigan in the World War, a list of the men and women from Michigan who received war decorations, is a volume of some two hundred and fifty pages compiled by Charles H. Landrum. It is published by the Michigan Historical Commission as a part of the *World War Series*.

Franz Ferdinand in Spokane, 1893, by C. S. Kingston; *The First Japanese Mission to America*, by Herbert H. Gowen; *Port Gamble, Washington*, by E. G. Ames; *Wenatchee Indians Ask Justice*, by John Hermilt and Louis Judge; and *Old Fort Colville*, by J. Orin Oliphant, are the papers in the January number of *The Washington Historical Quarterly*. Under the heading *Documents* is an installment of the *Diary of Wilkes in the Northwest*, edited by Edmond S. Meany.

The Depreciation and Donation Lands, by John E. Winner; *Romantic Story of Baron Basse, Founder of Zelienople*, by Dettmar Passavant; *The Election of 1864 in Western Pennsylvania*, by Norman C. Brillhart; and *Origin of the Names Given to the Counties in Pennsylvania*, by James McKirdy, are articles in the *Western Pennsylvania Historical Magazine* for January.

The December, 1924, number of *The Quarterly of the Oregon Historical Society* contains the following contributions: *Early Days on the Willamette*, by Fred S. Perrine; an address by Binger Hermann at the Port Orford homecoming and pioneer reunion, on August 14-16, 1924; a second installment of *The History of the Oregon and California Railroad*, by John Tilson Ganoe; and *The McNemeses and Tetherows with the Migration of 1845*, by Fred Lockley.

The New Brunswick Adventurers of '49, by Irving Stoddard Kull, is an article dealing with the California gold rush which appears in the January number of the *Proceedings of the New Jersey Historical Society*. Another article in this number of interest to students of western history is *The Indians of Somerset County*, by Charles A. Philhower.

The December, 1924, issue of *The Georgia Historical Quarterly* contains a continuation of *The Royal Government in Georgia, 1752-1776*, by Percy Scott Flippin, and a paper, *Myths, Legends, Miracles, and Mysteries, Related by the First Historians of Florida*, by J. G. Johnson. Under the heading *Notes and Documents* is printed *The Waddel Memoir*.

The *Nebraska History and Record of Pioneer Days* for January-March, 1924, contains the following papers and articles: *Exploration of Aboriginal Remains in Loup Valley*, by E. E. Blackman; *Early Pioneer Period in the West*, from a newspaper story by J. A. Smith, and *Early Railroad Development of Nebraska*, by C. J. Ernst.

The Florida Historical Society Quarterly for October, 1924, contains the following papers: *Colonial Florida*, by Louis J. Mendelis; *Florida's Great Seal: Its Historical Inaccuracies*, by T. Frederick Davis; *Florida Against Georgia: A Story of the Boundary Dispute*, by Fred. Cubberly; *Indian Races of Florida*, by Benjamin Harrison, and *Tallahassee in 1824-25*, from the *Pensacola Gazette*.

The Records of the American Catholic Historical Society of Philadelphia for December, 1924, contains a *Chronological List Showing the Dates of Appointment of the Bishops of the United States (1776-1866)*, compiled by Owen B. Corrigan. Another of the contributions is *Catholic Missionary Work Among the Colored People of the United States*, by Stephen L. Theobald.

The Louisiana Historical Quarterly, dated October, 1923, and published December, 1924, contains the following articles and papers: *A Chapter of Colonial History*, translated from a French manuscript by Gustave Devron; *Inauguration of De Vaudreuil*, translated from the French by Heloise H. Cruzat; *A Session of the*

Superior Council of Louisiana in 1744, by Henry P. Dart; *An Original Autograph of Henry De Tonty*; *Eliza Jane Poitevent Nicholson*, by James A. Renshaw; and the *Trial of Mary Glass for Murder, 1780*, translated from the original records by Heloise H. Cruzat, Laura L. Porteous, and J. Franklin Jameson.

The State Historical Society of Missouri has recently published volumes four, five, and six of *The Messages and Proclamations of the Governors of the State of Missouri*, compiled and edited by Grace Gilmore Avery and Floyd C. Shoemaker. Volume four contains the papers of Willard Preble Hall, Thomas Clement Fletcher, and Joseph Washington McClurg. The messages and proclamations of B. Gratz Brown, Silas Woodson, and Charles Henry Hardin are collected in volume five; while the papers of John Smith Phelps and Thomas Theodore Crittenden make up the sixth volume. This takes the series down to the year 1885.

The first article in the *Michigan History Magazine* for January is a biographical sketch, *Major General William G. Haan*, by LeRoy Pearson. This number also includes: *The Ford Collections at Dearborn*, by Henry A. Haigh; *Fifty Years of Michigan's Progress in Education: 1873-1923*, by Thomas E. Johnson; *Adventures in Vital Statistics*, by Vivian Lyon Moore; *Early Country Newspaper Publishers in Michigan*, by John W. Fitzgerald; and *Winter Scenes in Early Michigan*, from Hoffman's *A Winter in the West*.

The Illinois Catholic Historical Review for January contains a series of articles relating to the two hundred and fiftieth anniversary of the arrival of Father Marquette at the site of Chicago. Among the addresses included are the following: *Persons and Places Associated with History of Father Marquette*, by Joseph J. Thompson; *The Temporal and Spiritual Work of Father Marquette*, by William E. Dever; *Marquette and Illinois*, by Quin O'Brien; *Two Hundred and Fiftieth Anniversary History of Illinois*, by Joseph J. Thompson; and the *Story of the Chicago Portage*, by Lucius M. Zeuch.

The North Carolina Historical Review for January contains the following papers: *Culture and the New Era in North Carolina*, by

W. C. Jackson; *The Problem of Historical Interpretation*, by B. B. Kendrick; *Some North Carolina Tracts of the Eighteenth Century*, by William K. Boyd; and *A True and Faithful Narrative of the Proceedings of the House of Burgesses of North Carolina, 1739*. There is also a continuation of the *Diary of Colonel Joseph Hyde Pratt, Commanding 105th Engineers, A. E. F.*

The Significance of the Section in American History, an address by Frederick Jackson Turner; *Prohibition in Early Wisconsin*, by Joseph Schafer; *The University in 1874-1887*, by Florence Bascom; *Warren Downes Parker*, by Willard N. Parker; *Mail Transportation in the Early Days*; *A Trip Overland from the Cliff Mine to Appleton*, by Mrs. T. O. Bennett; and *Annals of a Country Tradesman*, by Oscar H. Bauer, are the articles and papers in the March number of *The Wisconsin Magazine of History*. A second installment of the interesting *Journal of a World War Veteran*, by Ira Lee Peterson, is also included, and there is a biographical sketch of John H. Tweedy.

The January issue of *The Missouri Historical Review* contains the following articles and papers: *The Missouri Chronicle, 1673-1924*, by Sarah Guitar and Floyd C. Shoemaker; *The Pioneer*, by Floyd C. Shoemaker; *The Old Tavern at Arrow Rock*, by Mrs. W. W. Graves; *The Missouri Mark Twain Collection*, by Laverne J. Dunbar; *The Initiative and Referendum in Missouri*, by N. D. Houghton; *Dedication of Missouri's Capitol, October 6, 1924*, by Floyd C. Shoemaker; *A Missouri State Newspaper Morgue*, by Laverne J. Dunbar; *Personal Recollections of Distinguished Missourians — James O. Broadhead*, by Daniel M. Grissom; *The True Story of "Old Drum"*, by Walter L. Chaney; *The New Journalism in Missouri*, by Walter B. Stevens; and the eighteenth installment of *The Followers of Duden*, by William G. Bek.

The Chronicles of Oklahoma for September, 1924, contains the following articles and papers: *French Interests and Activities in Oklahoma*, by Anna Lewis; *Folk-Lore of the Southwest*, by J. Frank Dobie; *Protestant Missions Among the Osages*, by M. L. Wardell; *Red River and the Spanish Boundary in the U. S. Supreme Court*, by Grant Foreman; *John Hobart Heald*, by Muriel H. Wright; and

Speech on Territorial Capital Removal, by Dan W. Peery. *La Harpe's First Expedition in Oklahoma*, by Anna Lewis; *The Nineteenth Kansas Cavalry in the Washita Campaign*, by Horace L. Moore; *Bloomfield Academy and Its Founder*, by Mrs. S. J. Carr; *Horace P. Jones, Scout and Interpreter*, by Joseph B. Thoburn; *The Shawnee Friends Mission*, by S. Carrie Thomson; and *Oklahoma City's Indian Scare*, by C. A. McNabb, are the papers in the issue for December, 1924.

These Forty Years is the title of an address, delivered by Charles M. Andrews before the American Historical Association at Richmond, Virginia, on December 27, 1924, which is published in the January number of *The American Historical Review*. *The Conversion of the British Trade-Unions to Political Action*, by Carl F. Brand; *The Supply of Gunpowder in 1776*, by Orlando W. Stephenson; and *An Interpretation of Civil War Finance*, by James L. Sellers, are the other contributions in this number. Among the shorter articles are: *The Later Career of Coronado*, by Arthur S. Aiton; *The Source of Force's Tract "A Brief Account of the Establishment of the Colony of Georgia, Under Gen. James Oglethorpe, February 1, 1733"*, by Leonard L. Mackall; and *"President of the United States for a Single Day"*, by George H. Haynes. This last article refers to David R. Atchison, chosen president pro tempore of the Senate on March 4, 1849.

The four papers which appear in *The Mississippi Valley Historical Review* for December, 1924, are the following: *Anti-Slavery Tendencies of the Democratic Party in the Northwest, 1848-50*, by William O. Lynch; *The Mississippi Valley and the Constitution, 1815-29*, by Curtis Nettels; *Major Lawrence Taliaferro, Indian Agent*, by Willoughby M. Babcock, Jr.; and *The Efforts of the Democratic Societies of the West to Open the Navigation of the Mississippi*, by E. Merton Coulter. *William Trent's Journal at Fort Pitt, 1763*, edited by A. T. Volwiler, appears under the heading *Documents*. The issue for March, 1925, contains *The Background of Populism in Kansas*, by Raymond C. Miller; *Local Defense and the Overthrow of the Confederacy*, by Frank L. Owlsey; *Ohio and the Greenback Movement*, by Reginald C. McGrane; and

Confederate Leadership at Vicksburg, by Thomas Robson Hay. Under *Documents are Documents Relative to the Establishment of Schools in Louisiana, 1771*, by David K. Bjork, and *Letters from Louisiana, 1813-14*, by Everett S. Brown.

The *Journal of the Illinois State Historical Society* for October, 1924, contains the following papers and articles: *John Locke Scripps, Lincoln's Campaign Biographer*, by Grace Locke Scripps Dyche; *An Episode of the Civil War: A Romance of Coincidence*, by Josephine Craven Chandler; *Many Contests for the County Seat of Adams County, Ill.*, by W. A. Richardson, Jr.; *Shabonee*, by Mrs. Alta P. Walters; *Gideon Blackburn, the Founder of Blackburn University, Carlinville, Illinois*, by Thomas Rinaker; *A Story of Electric Pioneering*, by E. L. Brown; *The Fine Arts Building in Jackson Park, Chicago, and a Brief Account of Some of the World's Fair Architects*, by Jessie Palmer Weber; *Jonathan Colby, Pioneer of 1834 in Menard County, Illinois*, by Lydia Colby; *Matthew Orr, Pioneer in Henry County, Illinois, 1852*, also by Lydia Colby; and *Marie Lefrette: A Story of Kaskaskia*, by J. L. McConnel.

ACTIVITIES

The tenth biennial report of the North Carolina Historical Commission, for the years 1922-1924, has been issued as Bulletin No. 31.

The Nebraska State Historical Society held its forty-eighth annual meeting at Lincoln on January 12 and 13, 1925.

The Buffalo Historical Society has issued in pamphlet form the reports submitted by the president and secretary at the annual meeting held at Buffalo on January 13, 1925.

The State Historical and Natural History Society of Colorado has issued its biennial report covering the period from December 1, 1922, to November 30, 1924.

The Wyoming State Historical Department has issued its third biennial report for the years 1923 and 1924. Mrs. Cyrus Beard is the State Historian.

The annual meeting of the Oklahoma Historical Society was held at Oklahoma City on February 3, 1925. A business meeting was

held in the afternoon and a program of papers and addresses in the evening.

The Nebraska State Historical Society has received the deed to the tract of land near Doniphan upon which is the grave of Mrs. Dunlap who as a girl was held captive by the Sioux Indians for some two months.

The North Dakota State Historical Society has just occupied its new building on the capitol grounds. L. W. Crawford, who has been acting curator, has been made superintendent of the society.

The Minnesota Historical Society in September, 1924, had 1340 members. Recent accessions of this society are papers of Ramsay Crooks, Gideon Pond, and Henry Hastings Sibley. The twenty-third biennial report of the Society for the years 1923 and 1924 has recently been issued as an extra number of the *Minnesota History Bulletin*.

A joint field meeting under the auspices of the State Historical Society of Wisconsin and the Minnesota Historical Society will be held at Winona, Minnesota, and LaCrosse, Wisconsin, on June 17 and 18, 1925. An excursion to the site of the old French post at Trempealeau will be one of the features of the meeting.

The Kansas State Historical Society has recently issued its twenty-fourth biennial report, covering the years 1922-1924. This includes the proceedings of the forty-eighth and forty-ninth annual meetings held on October 16, 1923, and October 21, 1924.

The Worth County Historical Society has been conducting an intensive campaign for new members. The Northwood town council has offered the society a room in the community building which is being remodeled for the collection of books, manuscripts, and relics. Dr. C. A. Hurd is the president of this society and Mrs. J. Johnson, the secretary-treasurer.

The Howard County Historical Society is preparing to construct a log cabin on the fair grounds at Cresco as a center for the society's activities and a memorial to the pioneers. It is hoped that sufficient logs will be donated for this purpose. The society holds monthly

meetings. At the annual business meeting held on March 9th at Cresco the following officers were elected for the ensuing year: C. J. Harlan, president; Lauraine Mead, vice president; Mrs. Alma Glass, secretary; and J. H. Howe, treasurer.

The seventy-sixth annual meeting of the Minnesota Historical Society was held at St. Paul, January 19, 1925. This included the fifth annual conference on local history work in Minnesota. The papers included "Robert Dickson and the Western Boundary of Minnesota", by Louis A. Tohill, "The Minnesota Lumberjack", by Wright T. Orcutt, and "The Influence of the Minneapolis Flour Mills in the Economic Development of Minnesota and the Northwest", by Charles B. Kuhlmann.

The annual meeting of the Mississippi Valley Historical Association will be held at Detroit on April 30, May 1 and 2, 1925. The Detroit Historical Society will act as the host and headquarters will be at the Statler Hotel. One of the sessions will be held at the Clements Library at Ann Arbor, followed by a luncheon. Saturday will be given to a visit to the industrial plant of Henry Ford. Dr. Fuller of the Michigan Historical Commission is chairman of the program committee and Mr. Clarence M. Burton, whose historical collection has been donated to the city of Detroit, is chairman of the committee on local arrangements.

At the meeting of the American Historical Association held at Richmond, Virginia, December 27-31, 1924, Charles M. Andrews was elected president for the ensuing year, Dana C. Munro vice president, John S. Bassett secretary, and Charles Moore treasurer. The annual joint meeting of the Mississippi Valley Historical Association and the American Historical Association was presided over by F. H. Hodder, president of the former. Five papers were presented at this program, one of which on *The Persistence of the Westward Movement in the United States* was read by John C. Parish, formerly Associate Editor of the State Historical Society of Iowa, now a member of the history staff of the University of California, Southern Branch. The dinner of the Mississippi Valley Historical Association on Monday evening was

well attended, and an able paper on *A Great Debate in American History: the Virginia Convention of 1829-30* was read on this occasion by William E. Dodd of the University of Chicago. At the Conference of Historical Societies on Tuesday afternoon Benj. F. Shambaugh, superintendent of the State Historical Society of Iowa, was elected chairman for the ensuing year.

THE STATE HISTORICAL SOCIETY OF IOWA

The State Historical Society has recently secured a copy of a short manuscript history of Troy Academy, one of the early secondary schools of Iowa.

Dr. Benj. F. Shambaugh, Superintendent of the State Historical Society of Iowa, gave an address on January 12, 1925, before the Polk County Federation of Women's Clubs on "Iowa History and the State Historical Society of Iowa".

Manuscript copies of two addresses by Homer H. Seerley have recently been deposited with the State Historical Society of Iowa. One is entitled "The Illustrious Founders of the Iowa State Teachers Association", the second "Seventy Years in Iowa".

The State Historical Society has in press a fourth volume of the *Applied History Series*. This is entitled *County Government and Administration in Iowa* and is made up of eighteen studies as follows: *Definition of the County in Iowa*, by Kirk H. Porter; *The County Board of Supervisors*, *The County Auditor*, *The County Treasurer*, and *The County Recorder*, all by Jacob Van Ek; *The Clerk of the District Court* and *The County Attorney*, both by James R. McVicker; *The County Sheriff*, by William A. Jackson; *The County Coroner* and *The County Superintendent of Schools*, both by Jay J. Sherman; *The Administration of Justice in the County*, by James R. McVicker; *The Administration of Welfare Work by the County*, by Earl S. Fullbrook; *The Administration of Highways in the County* and *The Administration of Taxation and Finance in the County*, both by Ivan L. Pollock; *Drainage Districts in Iowa*, by Jay J. Sherman; *County Administration of Health*, by Earl S. Fullbrook; *The County and Elections*, by George F. Robeson; and *Reorganization of County Government in Iowa*, by Kirk H. Porter.

The following persons have recently been elected to membership in the Society: Mr. C. A. Benson, Elkader, Iowa; Mr. Fred R. Blythe, Williamsburg, Iowa; Mr. Geo. Clearman, Oxford, Iowa; Mr. Albert E. Coe, Monticello, Iowa; Mr. I. W. Cook, Oskaloosa, Iowa; Mr. John S. Cutter, Shenandoah, Iowa; Mr. T. M. Delaney, Council Bluffs, Iowa; Dr. Royal F. French, Marshalltown, Iowa; Dr. M. B. Hilts, Sloan, Iowa; Mr. John F. Hynes, Des Moines, Iowa; Mr. Francis Johnson, Terril, Iowa; Mr. H. F. Marchant, Scranton, Iowa; Mr. E. B. McConnell, Humeston, Iowa; Mr. Charles Rhinehart, Dallas Center, Iowa; Mr. D. Fulton Rice, Centerville, Iowa; Mr. Edward Robinson, Iowa City, Iowa; Mrs. Oscar Ruff, Sioux City, Iowa; Mr. J. W. Schreiber, Sibley, Iowa; Mr. C. A. Smedal, Nevada, Iowa; Mr. W. H. Stepanek, Cedar Rapids, Iowa; Mr. E. B. Wilson, Jefferson, Iowa; Mr. Guy Christensen, Britt, Iowa; Rev. Robert E. Flickinger, Rockwell City, Iowa; Mr. Geo. F. Kranz, Bellevue, Iowa; Mr. Edwin H. Lougee, Council Bluffs, Iowa; Mr. Roy S. McIntosh, Dubuque, Iowa; Mr. Homer C. Myers, Rock Rapids, Iowa; Mr. F. A. Neidig, Muscatine, Iowa; Mrs. G. M. Sheller, Grundy Center, Iowa; Mr. John F. Kline, Bloomfield, Iowa; Mr. Fred J. Lazell, Iowa City, Iowa; Mr. J. C. Maloney, Chariton, Iowa; Rev. Frank A. Mullin, Iowa City, Iowa; Rev. Edward Neuzil, Iowa City, Iowa; Mr. Earl E. Oakes, Mason City, Iowa; Mr. John L. Shugart, Council Bluffs, Iowa; Mr. Charles W. Stewart, Gaza, Iowa; Mr. M. A. Trabert, Knoxville, Iowa; and Miss Emma Watkins, Iowa City, Iowa.

NOTES AND COMMENT

A writers' conference was held at Iowa City on March 25, 1925. A poetry round table was held in the forenoon, a fiction round table in the afternoon, and a lecture by Henry Seidel Canby in the evening.

Alonzo N. May, one of the founders of the Allamakee County Historical and Archeological Society and its secretary for many years, died at Waukon on March 17, 1925.

Professor Winfred T. Root of the University of Wisconsin has been appointed head of the Department of History at the State University of Iowa. He succeeds Professor Arthur M. Schlesinger who resigned to accept a professorship at Harvard University. Professor Root will assume his duties at the opening of the school year in September.

A brief biographical sketch of Mrs. William Larrabee has recently been published. This was written by her granddaughter, Helen Augusta Larrabee, as "The Story of My Grandmother" in the essay contest conducted last year by the Iowa Federation of Women's Clubs and the State Historical Society of Iowa.

A granite boulder has been placed in South Hill Park at Burlington to commemorate the scientific observation made at this place at the time of the solar eclipse on August 7, 1869. The memorial was the gift of the D. A. R. chapter of Burlington. Accounts of the eclipse were given at the dedication by Luke Palmer and Mrs. Louisa Weinstein who witnessed it, and by Mrs. Ida Barlow Uhler, and Mrs. Cate Gilbert Wells.

CONTRIBUTORS

CHARLES J. FULTON, State Senator from the Second District. Born in Jefferson County, Iowa, on January 27, 1860. Graduated from Parsons College, in 1883. Was mayor of Fairfield from 1903-1907 and again in 1920, and is a trustee of Parsons College, a trustee of the Fairfield public library, and a member of the school board. Was a member of the House of Representatives in the Thirty-third and Thirty-fourth General Assemblies.

FRANK ANTHONY MULLIN, Instructor in History at Columbia College, Dubuque, Iowa. Born at Dubuque, Iowa, on December 31, 1892. Received the B. A. degree from Columbia College in 1914 and the degree of S. T. B. from the Catholic University of America in 1919. Attended the University of Iowa during the summer sessions of 1922 and 1923 and during the year of 1924-1925.

CARL HERMAN ERBE, Graduate Assistant in the Department of Political Science at the State University of Iowa. (See *THE IOWA JOURNAL OF HISTORY AND POLITICS* for April, 1924, p. 319.)

THE STATE HISTORICAL SOCIETY OF IOWA

ESTABLISHED BY LAW IN THE YEAR 1857

INCORPORATED: 1867 AND 1892

LOCATED AT IOWA CITY IOWA

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Any person may become a member of THE STATE HISTORICAL SOCIETY OF IOWA upon election by the Board of Curators and the payment of an entrance fee of \$3.00.

Membership in this Society may be retained after the first year upon the payment of \$3.00 annually.

Members of the Society shall be entitled to receive the quarterly and all other publications of the Society during the continuance of their membership.

Address all Communications to

THE STATE HISTORICAL SOCIETY IOWA CITY IOWA

THE IOWA JOURNAL *of* History and Politics

JULY 1925



Published Quarterly by
THE STATE HISTORICAL SOCIETY OF IOWA
Iowa City Iowa

THE IOWA JOURNAL OF HISTORY AND POLITICS
JULY NINETEEN HUNDRED TWENTY-FIVE
VOLUME TWENTY-THREE NUMBER THREE

PROGRESS OF THE ARCHEOLOGICAL SURVEY OF IOWA

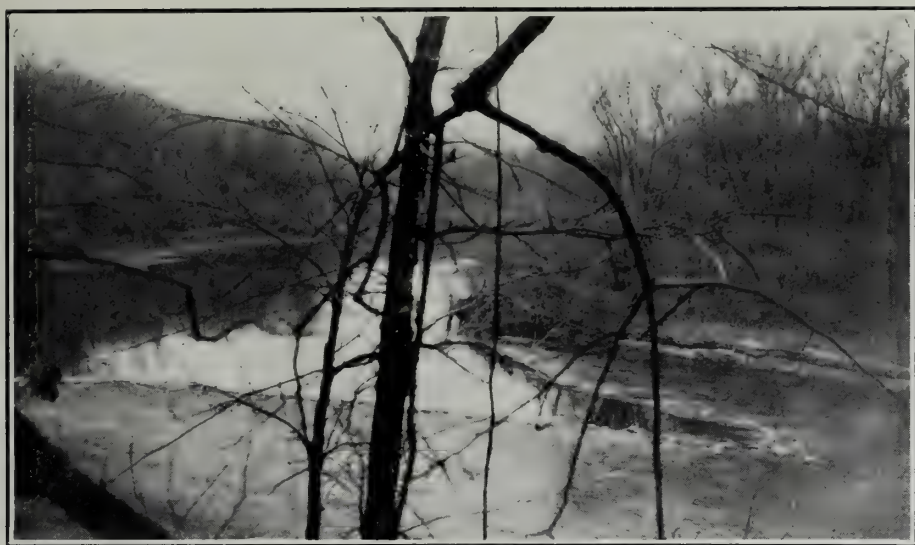
The survey of the antiquities of Iowa begun by the State Historical Society of Iowa in 1922 is preliminary in nature. That is to say, the survey aims primarily to bring together existing information, rather than to conduct intensive explorations of particular sites for the purpose of acquiring facts that are entirely new. The intention is to take as complete account as possible of information now obtainable, that a guide may be furnished for any intensive work that may later be undertaken. A preliminary survey that does not contemplate detailed field work at any one point, but only a summary of past work, a catalog of archeological sites, and an appraisal of the numerous collected materials can not do more than furnish a general view of the field. On the other hand, a piece of intensive work on a single site can not have its full meaning except as a part of this general view. It is believed that a rapid survey will provide the best starting point for the more complete future knowledge of the archeology of Iowa. The field is vast, and thus far very little real scientific work has been done within it. Since the publication five years ago of the writer's sketch of the Iowa archeological field,¹ the work of each successive season has made more clear the practically unlimited extent of this field.

In part the existing information is in published form in a large number of items and articles in books, magazines, and newspapers; in part it is held in the minds and notebooks of

¹ *Some Materials for the Study of Iowa Archeology* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XVIII, pp. 357-370.

hundreds, indeed thousands, of persons who have had some conscious contact with the Iowa archeological field. Everyone who knows definitely of the location of an Indian mound, or of the finding of a stone arrowhead or stone ax, has in his possession an item which, if contributed, would help foot up the sum total of the knowledge which is being sought. A preliminary survey of the archeology of Iowa will involve, then, two distinct lines of effort: (1) the preparation of a bibliography and summary of the literature, and (2) an attempt to assemble, county by county, the large amount of unpublished information held by many persons. In the nature of the case neither of these lines of inquiry can ever attain complete and perfect results, but it is hoped that a faithful examination of archeological literature and of the history of Iowa, combined with a hearty response from those who have a definite fact to contribute, may result in a study which will reflect with reasonable accuracy and completeness the status of knowledge at the time of publication.

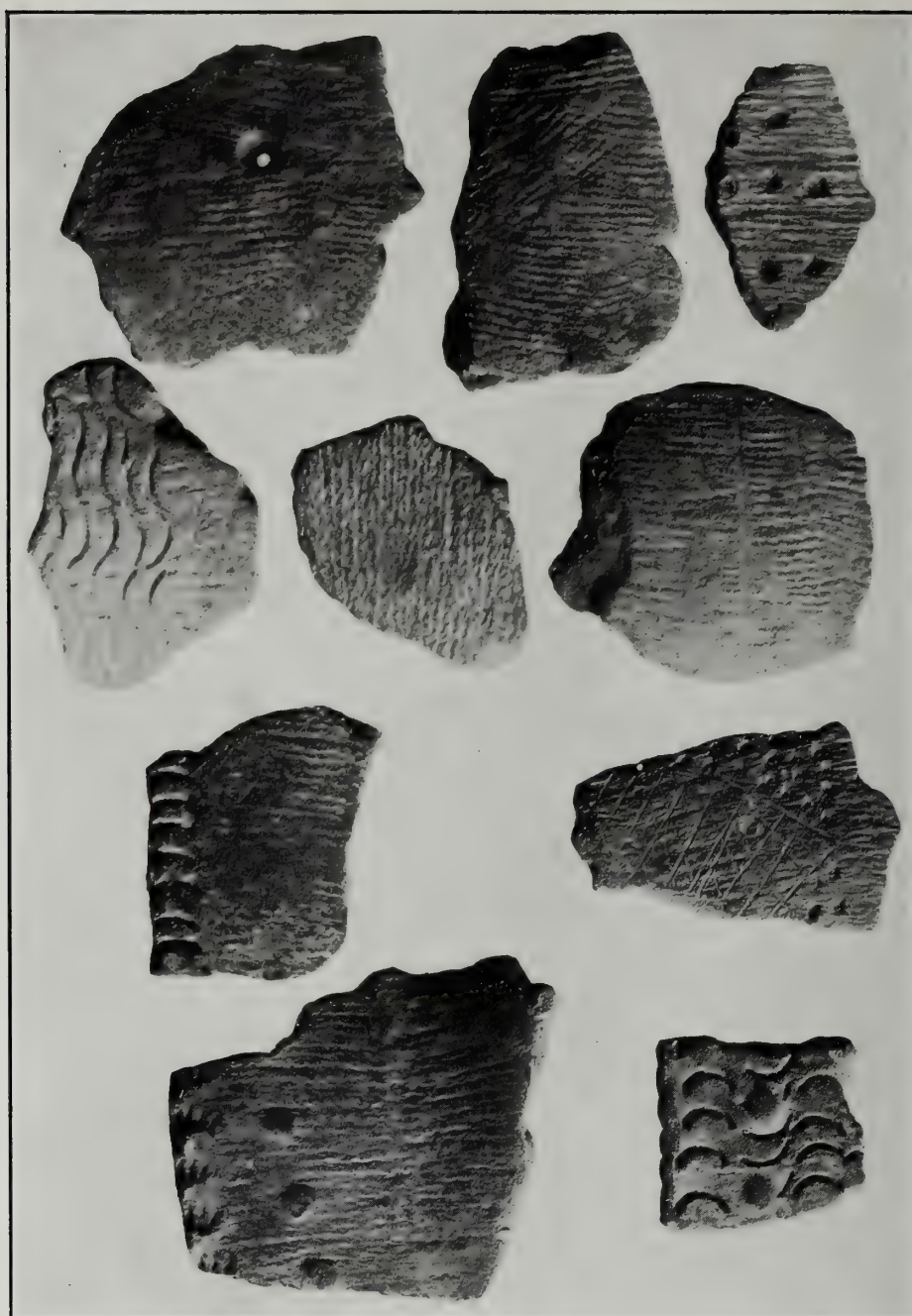
The first line of inquiry, a survey of the literature, has led far afield and has already called for two and a half summers work, for the most part in the extensive library of the State Historical Society at Iowa City, though the resources of a number of other libraries, both in and outside of the State, have been utilized. Some five hundred titles have thus far been collected, and this part of the survey now seems measurably near to completion. In this connection the importance of newspaper items should be noted. It has frequently happened that an important find, say of ancient human burials or a cache of stone implements, first chronicled in the local paper, has failed, for lack of any agency charged with assembling such information, to find its proper place in the more permanent literature. During recent years the various clipping bureaus have gone far toward salvaging these local items, though undoubtedly



NEAR VIEW OF STONE DAM OR FISH TRAP IN IOWA RIVER AT AMANA LOOKING NORTH



VIEW OF STONE DAM OR FISH TRAP IN IOWA RIVER AT AMANA LOOKING NORTHWEST



POTSHERDS OF ALGONKIAN TYPE FROM VILLAGE SITE AT AMANA; GENERALLY BROWN OR RED; FOUND THROUGHOUT IOWA, BUT ESPECIALLY IN THE SOUTHERN HALF OF THE STATE; THE FOUR SPECIMENS TO THE LEFT ARE RIMSHERDS

many finds will remain in obscurity unless the facts about them are sought out and forwarded by some friend with a good memory or with a well kept scrapbook.

Various efforts have been made and are being made to collect the large body of unpublished information held by people living both within the State and outside of it: correspondence has been carried on; a number of lectures, with requests for information, have been given; a considerable part of the State has been personally visited; finally, use has been made of radio broadcasting. Real information has been secured by all of these methods.

The first method mentioned, that of correspondence, was sponsored initially by Dr. Benj. F. Shambaugh, Superintendent of the State Historical Society of Iowa, who caused to be sent out, on January 25, 1924, some fifteen hundred letters to members of the Society and other persons known to be interested, who were made acquainted with the fact and purposes of the survey and asked for any information that they might possess. The results secured from this letter went much beyond expectations. About one hundred returns were received, giving information from nearly half of the ninety-nine counties. Many hitherto unrecorded mound groups, village sites, ancient trails, and other antiquities were reported, and many collections of archeological materials were for the first time made known. The fact that the State itself was showing an interest in its antiquities also gave courage and inspiration to many a lonely collector, and the first letter of inquiry proved in many cases to be only the starting point of a continued and profitable correspondence.

Lectures on the archeology of Iowa have been delivered at Ames, Grinnell, Nevada, Blainstown, West Branch, Mt. Vernon, Cedar Rapids, and McGregor, and papers have been presented at science meetings in Milwaukee, Wiscon-

sin, Springfield, Illinois, and Iowa City, Iowa. At each place items new to the survey have been secured, and available information has been imparted. At McGregor, especially, where membership on the staff of lecturers of the School of Wild Life Protection brought contact with people from all parts of the State, it has been possible to assemble a considerable amount of data, or at least to obtain leads that resulted in the securing of data. While people can not always supply definite information and statistics, the fact that they know of the approximate location of mounds and other antiquities, or the name of an interested collector, is of importance and often the lead given traces out to a very happy and profitable conclusion.

Rapid field work has been carried on for a total of about nine weeks up to the present time, more or less contact being established in forty-five of the counties in eastern and southern Iowa. The results attained have generally been quite satisfactory, considering the rapid nature of this field survey. Many collections of material were studied, their owners interviewed, and wherever possible known sites were visited and given a superficial examination. In a number of cases, also, assistance was rendered to persons who desired an opinion as to the nature of some of their finds. On the average this personal contact with the field, slight as it was, about doubled the available information for the counties visited. For 1925 the field work will be carried on for several weeks in central and west central Iowa and, if time permits, also in some of the counties in northwestern Iowa. While information is wanted at this time from every part of the State, and the sooner this is in hand the better for the survey, it is especially desired, for purposes of this summer's work, to secure reports that may serve as further starting points in the following counties: Poweshiek, Jasper, Polk, Dallas, Boone, Greene, Carroll, Crawford, Harri-

son, Monona, Woodbury, Plymouth, Sioux, Lyon, Osceola, O'Brien, Buena Vista, Ida, Sac, Calhoun, Webster, Hamilton, Hardin, and Grundy. Sufficient address for letters is — The State Historical Society of Iowa at Iowa City. When one is working so largely in unknown quantities, it is not possible to make an entirely definite itinerary, nor is it possible for a preliminary survey, without an undue expenditure of time and money, to reach every point that one would like to visit. An attempt will be made, nevertheless, to reach all promising sites and to interview and assist all those who have an interest in the furtherance of the survey.

The fact should again be emphasized that the making of a successful survey of the State's antiquities involves of necessity a large amount of coöperative effort. This fact is recognized in all the States now trying to assemble archeological data. In some States, as Wisconsin, Michigan, Alabama, and Tennessee, archeological societies, holding regular meetings and, in the case of Alabama and Wisconsin, publishing a small magazine, are successfully gathering and disseminating information. In other States, as Ohio, Indiana, Iowa, Missouri, and the Dakotas, some State institution, usually the University or the State Historical Society, has taken the lead in an attempt to make an archeological survey. There seems to be no reason why both a State institution and a society of interested workers, organized for social contact and inspiration as well as for scientific research, should not coöperate in a common aim. Various inquiries have been made in the Iowa field and, while the number of seriously interested students thus far discovered seems hardly to call for a new society as yet, it is to be expected that the number will increase and that eventually a desire will be felt for a closer exchange of information and ideas. There is certainly a growing realization in Iowa as elsewhere, of the importance of the ancient monuments,

of the fact that these are disappearing rapidly, and of the need of general coöperative effort if the story of prehistoric man is to be read before the writing becomes too dim. This is all very encouraging, and indeed the response has been, in the field as well as to written appeals, much heartier than was anticipated.

When the collected facts are finally published, an attempt will be made, of course, to give due credit to the many contributors. It would also be most pleasant, though perhaps not so easily practicable, to express appreciation of the almost numberless favors shown to the writer on his field trips: transportation by most of the known methods, to places that are sometimes hard to reach — over good roads, by automobile; through deep mud or over rocky hillsides, on or behind good Iowa horses; and in the river bluffs, by row boat or motor boat; guidance on foot to some hidden creek ravine, where even yet white men seldom go, but where the red man established his little village in the long ago; the willingness of some rural collector to come to town in response to a phone call, in order to bring in for inspection a boxful of relics picked up on the home farm; personal favors, frequently within the home itself, where public accommodations for transients were not available.

The farmers of the State are naturally in closest touch with the archeological situation, though the town collector is sometimes also a diligent searcher of the fields and ravines. From both groups many an item of information has been received and to both the survey is indebted for many a favor. Notwithstanding the generous response to appeals for information, however, it is to be presumed that the large majority of Iowa archeological sites still remain undiscovered. When a site once becomes buried beneath the plow line, only the wash of a stream, the digging of a cellar, cistern, or foundation, the grading of a road, the

opening of a gravel pit, or some similar operation, can again bring it to the light. But just such operations are uncovering the works of ancient man each year, and if it were only possible to assemble the facts concerning such finds, the essential characteristics of the archeology of Iowa would soon appear. It is hoped that a knowledge of the State's efforts to record its antiquities will soon become general and that as a matter of course all finds will be promptly reported. It will not be easy to create this ideal condition, but, as above remarked, progress in this direction is most gratifying.

Many persons unacquainted with the signs of ancient human life in Iowa will naturally want to know what the evidences actually are. Roughly speaking, the categories of our antiquities are about as follows:

1. *Village sites.* Favorite locations were the somewhat sandy second terraces of streams, especially the tributaries of the longer streams, where a good spring furnished water and the timber furnished game. A few sites only have been found on the tops of broad ridges overlooking streams. The light wigwams of the Algonkian tribes have left little or no trace, and apparently the village was not surrounded by a ditch; but the earth lodges of the Siouan and Caddoan tribes (it is not entirely certain that we have the latter in Iowa) are marked by circular depressions some twenty-five feet in diameter, and the whole village is frequently surrounded by a moat-like ditch. Many of the old sites are still above the plow line and after each washing rain the refuse of the men's flint working operations and the pottery fragments of the women's activities become visible. Frequently the sites produce also both finished and unfinished flint and groundstone implements, as well as stone mortars, hand mullers, and kitchen refuse in the form of clam shells, and bird and animal bones. The potsherds are the best index to

a culture and are therefore highly important. Even small fragments should be saved. The Iowa field produces at least three very different types of Indian pottery, the women of the different stocks or cultures (Algonkian, Siouan, and others), having had, as a rule, quite divergent views in matters of texture, form, and decoration. It follows that specimens from all parts of the State would go far toward solving problems of cultural distribution. To help in the study of pottery fragments several photographs are herewith reproduced.

2. *Caves and rock shelters.* In parts of the State where cliff overhangs stand far enough back from the streams to afford a dry shelter, and where wide-mouthed caverns abound, these refuges were used as places of permanent abode and produce, in even greater concentration than the village sites, the camp refuse of ancient man.

3. *Shell heaps.* These are accumulations, sometimes quite deep, of fresh water mussel shells, opened to obtain food or pearls, or both, and are naturally found along the banks of the larger streams and usually in or near a village site.

4. *Mounds.* Groups of mounds are generally near a village site and may stand either on a stream terrace or, more frequently, in a row along a high ridge. They occur in most parts of Iowa in considerable numbers and on account of their regular form and artificial appearance are generally recognized. In northeast Iowa along the Mississippi bluffs they often take the form of animal or bird effigies or long straight embankments; elsewhere in the State the mounds usually have a round base. Their size varies greatly.

5. *Cemeteries.* Sometimes the mounds appear to have been the principal cemeteries. They vary greatly in location, and there is great variation also in the manner of

burial. Sometimes the bodies were buried in an extended, sometimes in a flexed position; again the bones only were collected from an earlier tree or scaffold burial. The earth burial outside of a mound called for a loose soil, either within the village itself or on some nearby knoll, terrace, or hilltop. In a few cases deep caves are known to have been used.

6. *Trails.* It is highly desirable that the trails connecting the numerous villages, often worn to a considerable depth through generations of use, should be located. This is a difficult matter, as nearly all the old pathways have been obliterated. The memories of the living white pioneer should here be called upon.

7. *Spirit places.* The early Indians often held as sacred those places — hills, trees, springs, boulders, and the like — that had become associated in their minds with some special phenomenon or some unusual event. Examples are the great bur oak three miles south of Davis City, Decatur County, used as a burial tree when the first settlers entered the region, and the Painted Rock, a great cliff overlooking the Mississippi nine miles above McGregor.

8. *Rock carvings and paintings.* A few of these are found on the cliffs and in the caves of northeastern Iowa. A few stone slabs with pictographs have also been discovered along the streams of east central Iowa. A good example is preserved in the Fairfield public library.

9. *Stone dams or fish traps.* Only one example is known, which will be described later in this article. Very likely others exist.

10. *Flint or hematite quarries.* No ancient quarries are thus far known to the survey, though it seems probable that such exist. Great numbers of flint implements of a creamy-white color are scattered over the State, quite similar to the material of the flint beds of southeastern Iowa, especially

in the vicinity of Burlington. No flint workings have been identified, but Burlington and Ft. Madison students should be on the lookout. The place, or places, should be marked by flint refuse, partly fashioned implements, and crude, massive hammerstones. In south central Iowa, in the coal measures region, many nodules of red, reddish-black, and bluish-black hematite are found, especially in the ravines, and these the early inhabitants used for the making of implements and ornaments. It is possible also that they may have sunk shafts, as they sometimes did in Missouri, for the purpose of obtaining hematite of special grades for either paint or implement making.

By this time some minds doubtless contain the query, what is the real promise of the Iowa archeological field? It can only be said here, in brief, that Iowa promises to be as rich archeologically as any other State and that, as evidence already in hand shows the State to have been a meeting point of tribes belonging to several different stocks, our field may also become known for the variety of its phenomena. Marginal areas are always interesting, as well as scientifically important, and it is an alluring prospect that contemplates the tracing out of the lines of contact between the woods Indians from the north and east with the plains tribes from the west and the possible reading of the story that these contacts have to tell.

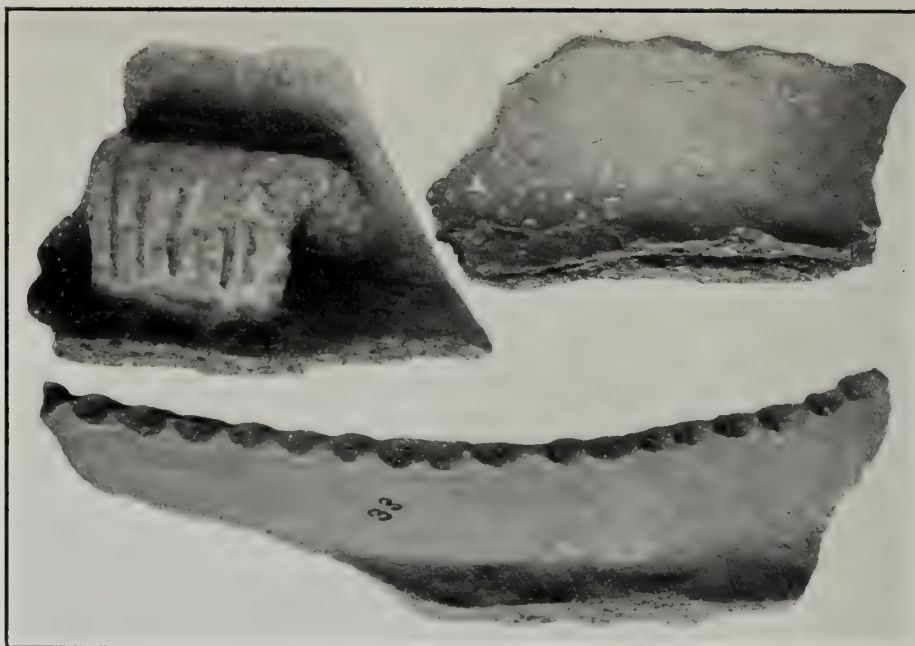
That the present account may gain something in concreteness and that further hints may be offered to the increasing number of observers, a few of the results of the survey may be enumerated here, more or less at random:

1. The Hopewell, or "mound builder" culture, characterized by its lavish use of copper implements and ornaments, fresh water pearls, and curved-base effigy pipes,²

² For illustrations of typical objects see *Proceedings of the Davenport Academy of Sciences*, Vol. I, 1876, plates I-X, XXXIII, XXXIV.



POTSHERDS OF NORTHWEST IOWA TYPE, THE FIVE UPPER FROM THE BROKEN KETTLE SITE IN PLYMOUTH COUNTY, THE SIX LOWER FROM VILLAGE SITES NEAR CHEROKEE; GENERALLY GRAY OR BLACK, WITH TEMPERING OF FINELY-CRUSHED GRANITE



POTSHERDS OF NORTHEAST IOWA TYPE FROM UPPER IOWA RIVER VILLAGE SITES; GENERALLY LIGHT BROWN, WITH TEMPERING OF CRUSHED MUSSEL SHELLS; FOUND ALONG THE UPPER IOWA AND ON SCATTERED SITES ELSEWHERE IN THE STATE



MOUSE HOLLOW ROCK SHELTER, EIGHT MILES NORTHWEST OF MAQUOKETA; DEEP CAMP REFUSE FOR ABOUT ONE HUNDRED FEET ALONG CLIFF BENEATH OVERHANG

the culture that more than any other, following the Ohio excavations of eighty years ago, made American archeology famous, is found to occupy a greater range in Iowa than was formerly supposed. Forty-five years ago the Davenport Academy of Sciences uncovered the Hopewell along the Mississippi between Toolesboro in Louisa County and Clinton. Recent discoveries at Bellevue on the Mississippi and near Clermont on the upper Turkey extend the range of this culture over one hundred miles to the northwest.

2. Over a large area in northeast Iowa, where the country is but little or not at all ironed out by glacial action and where, therefore, the river gorges and creek ravines are margined by limestone cliffs and bluffs, primitive man is found to have made extensive use of the numerous caves and rock shelters. Some twenty-five such sites are known and, as they have been found within this topography wherever diligent search has been made, it seems probable that the study of Iowa's cave men has made only a beginning.

3. The northwestern part of Iowa, though comparatively treeless and, in its primitive condition, offering little protection from the rigors of winter, proves to be exceptionally rich in antiquities. The compact villages of earth lodges provided protection in any weather and, judging by the great accumulations of refuse, must have been occupied for long periods of time. The artificial deposits of the Broken Kettle site, twelve miles northwest of Sioux City, in Plymouth County, were eleven feet in depth when trenched through some twenty years ago. According to recent reports, the deposits on certain other sites promise to be even more extensive. A material culture based largely on the region's resources in the way of the larger mammals is plainly indicated: the bones of deer, elk, and especially bison, cracked open to obtain the precious marrow; heavy stone hammers with which the cracking was accomplished;

digging implements made from the great shoulder blades; bone awls and needles with which to sew the skins—all mingled together with the fragments of the pottery cooking vessels, the stone and bone weapons and utensils, and the ashes and charcoal of the ancient fires.

4. A remarkable example of natural excavation of a village site occurred in Washington County near Coppock during the flood season of last July. An old Algonkian site, situated in a bend of Main Creek at the foot of a long slope, lay below the plow line and unknown, until one day the creek rose eight or ten feet higher than any previous record, and, with its vicious current, carried away from three to five feet of the loose, sandy soil, in places down to hard pan. The work of excavation was most thorough, but from the archeologist's viewpoint, not exactly scientific: probably most of the village remains went on down the creek. However, some twenty grooved stone axes, about three hundred flint implements, a large stone mortar, various hammerstones, much debris from the flint workers' operations, and fragments of pottery unnumbered were left scattered about the creek terrace. These various objects, from what will be known as the Cochran site, are now in the hands of different persons in the vicinity.

5. An interesting recent addition to the State's catalog of antiquities is the stone dam in the Iowa River at Amana. This great work was found in place by the pioneers of Iowa County, though its purpose and origin seem to have been recognized only recently. The dam is built of glacial boulders, the uppermost of which show above the surface during low water. The shape is that of a great V with the open point directed downstream. The south wing is nearly one hundred yards in length, the north wing somewhat shorter. The Indians' fish traps were set, of course, in the narrow opening to which the fish were confined. The work has not,

as yet, been given a careful examination, though it lies in an area rich in antiquities. On the river terrace to the north are two village sites, at least, and on the hills round about are many groups of mounds.

Throughout the whole extent of Iowa, apparently, filling in the spaces between the abodes of the different tribes, the weapons of primitive man, lost in war or the chase and subsequently covered by the accumulation of soil, are constantly being brought to light again by the operations of men and of nature. Through the mingling of these flint arrowpoints and spearheads, stone war club heads, celts, and axes the different cultures acquire a continuity that is so lacking on their home sites. Hundreds of collections, big and little, of these field finds exist in Iowa, in addition to the smaller number of collections made mainly on the village sites. The specimens are generally found in newly plowed cornfields following spring and early summer rains and are therefore largely in the hands of the farmers of the State. All these collections, however small, would help to tell the story of prehistoric man in Iowa, provided the simple facts concerning them were preserved. It is particularly important that the exact locality where each specimen is found should be known. If time can not be found to number and catalog each object, those from different farms or along different creeks can easily be kept in separate labeled boxes. Where the relics tend to concentrate on a given small area, it is especially desirable to keep these by themselves. The most distressing experiences thus far encountered by the survey have been the finding of a number of large collections whose owners had passed away without leaving a particle of information as to where the materials were collected. This lack of data was especially unfortunate where it was known that the collector had gathered his specimens from various parts of the State, and even from different

States. Such collections may have a certain amount of interest as mere curiosities, but are worthless, of course, as study materials on which valid conclusions might be based.

On the other hand, it has been a great satisfaction during the progress of the survey to find so many collectors and students who know and record the history of their specimens and who, in many cases, are making an intensive study of their own particular localities. One collector has concentrated his efforts for thirty years on a single township, another does not care for anything found outside of his own county; the former has over seventeen hundred specimens gleaned from a few hillsides of south central Iowa, the latter, at last accounts, had over fourteen thousand specimens from some fields and rich village sites of northwestern Iowa.

It certainly must be true that many persons in contact with the Iowa archeological field have not, as yet, had any touch with the proposed survey of our antiquities. It is hoped that they will not only keep their collections available for study, but that they will make themselves known to the survey and help to build up a body of information that will eventually tell, to a considerable degree at least, the story of those peoples whose cornfields were already waving here before the ships of Columbus were pointed westward. The State Historical Society of Iowa at Iowa City desires to assemble all possible information; to classify it; to interpret it, so far as may be; and finally, through publication, to make it accessible to all who care to know.

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THE PRONUNCIATION OF THE WORD IOWA

Six different pronunciations of the word *Iowa* have had from time to time more or less acceptance in popular usage. They are: (1) I'oway [·aiôwê], (2) Io'wah [aiôwâ], (3) I'ower [·aiôwër], (4) I'owah [·aiôwà], (5) I'owuh [·aiôwə], (6) I'uhwuh [·aiəwə].¹

Of these the second form has had but little currency within the State at any time, and the third form even less. It is proposed in this paper to discuss these various pronunciations as to their origins and validity.

Number one approximates the etymological pronunciation; that is, it is reasonably close to the pronunciation of the word from which our modern word *Iowa* is derived. The Indians who gave their name to the river from which the Iowa District was named by Albert Lea were called Ioways or Iooways. The early explorers, chiefly Frenchmen, used various spellings to convey the sounds of this name as they heard them, sixty-eight of which are listed in Frederick Webb Hodge's *Handbook of American Indians*.² Some typical spellings follow: Aiaouez, Aiauguay, Aiouez, Aiowais, Ayauvai, Ayoouais.³ There are also a few ending

¹ In each of these six pronunciations, the first form given represents an attempt to indicate the pronunciation by means of the letters of the regular alphabet. The second form represents the sounds by the symbols adopted by the American Dialect Society. (See the third cover page of any issue of *Dialect Notes*.) Throughout this study, symbols placed within brackets are those of this Society. They are similar to those of the *Association Phonétique Internationale*. The various systems of diacritical marks are confusing and founded on misconceptions.

² Hodge's *Handbook of American Indians*, Pt. 1, p. 614 (*Bulletin 30 of the Bureau of American Ethnology, Smithsonian Institution*).

³ The United States Geographic Board fixed upon *North Aowa* as the name of a creek in Dixon County, Nebraska, which was variously called Agoway,

in *-a* and *-ois*; but most of them end in *-ez*, *-ais*, or *-es*, which represent sounds either equivalent to or approximating the sound of *a* in fate [ê]. The initial *Ai-* (*Ay-*) is a good phonetic representation of our so-called "long *i*" [ai]; and the second vowel sound, frequently represented in these French spellings by *ou*, stands for the sound of *oo* in the English word *spoon* [û]. Mr. Alanson Skinner, Curator of Anthropology in the Public Museum of Milwaukee and our best authority on the Ioway Indians, says in a private letter: "In my ten years' experience with the tribe, I have heard the name repeatedly pronounced by the members of both the Oklahoma and Kansas-Nebraska divisions as follows: ai'-yu-way,⁴ the accent being on the first syllable, and the last syllable having the distinct *ay* sound. . . . I am sure that these Indians have never pronounced their name *Iowah* any more than the Ojibway tribe have ever called themselves *Ojibwah* or *Chippewah*." It is clear, in view of these facts, that the person who insists on a strictly etymological pronunciation should say Iooway or Iyooway.

The *oo* sound of the second syllable [û] seems never to have had much currency in the name when applied to the territory, but there is abundant evidence that *Ioway* was the prevalent pronunciation during the pioneer period. The recollections of pioneers and the occasional spelling of the word with the *-y* final indicate that usage. In Irving's *Adventures of Captain Bonneville* and *Astoria*, in the *Original Journals of the Lewis and Clarke Expedition*, in seven treaties with the Indians between 1815 and 1838, and even in the records of debates in the United States Senate, the Ayowa, Iowa, Ioway, and Aowa.—*Fifth Report of the United States Geographic Board*, 1921, p. 235.

⁴ Mr. Skinner's *y* sound represents a very natural transition sound between the *i* in the initial diphthong [ai] and the following [û]. The tongue rises after [i]. Note the French spellings like Ayoes, Ayououais, etc. (See Note 2.)

word is spelled *Ioway*.⁵ So it is in many works relating to the Indians, as in Hamilton and Irvin's *Ioway Grammar*. Moreover many older Iowans still retain the *Ioway* pronunciation, though frequently the final syllable is stressed so little that the *ay* sound is not noticeable.

If the final *-y* had not been dropped in spelling, there would probably have been no change in pronunciation. Albert Lea, late in life, regretted the movement away from the old *Ioway*, but if he and other early writers and map-makers had retained the *-y* he would probably have had nothing to complain of.⁶

The origin of pronunciation number two — Io'wa — is difficult to find. When one tries to account for the second-syllable accent by analogy, remembering *Iona* and *iota*, one is embarrassed by the commoner *iodine*. There is no trouble about accenting the the first syllable of the trisyllabic *Idaho*. It is scarcely possible that the penultimate accent of *Ohio* has affected the accent in *Iowa*, although there is no doubt that many Easterners confuse the two States. The fact remains that in the East and South the second-syllable accent for *Iowa* is very common. I have asked many people their reasons for this pronunciation, and have sometimes received the answer that it was taught at school. Yet the geographies and dictionaries in use do not have it. Out of the ninety-two records of pronunciation of the word Iowa which I have found in various books,⁷ only three give the

⁵ Senator John C. Calhoun of South Carolina, and Senator Clement C. Clay of Alabama in a debate on a bill to grant preëmption rights to actual settlers on the public lands, January 29, 1838.—*Congressional Globe*, 25th Congress, 2nd Session, Appendix to Vol. VI, pp. 139, 140. See also Salter's *Iowa: the First Free State in the Louisiana Purchase*, Appendix, p. 277.

⁶ See *Annals of Iowa* (Third Series), Vol. VI, p. 557, where it is asserted that Lea was the first to drop the *-y* in spelling the word on his famous map.

⁷ A list of these pronunciations and the sources from which they were obtained appears in note fourteen.

penultimate accent, and two of them are English, and only one of the three was published in the last half century. They are Chambers' *Concise Gazetteer of the World*, London, 1914; Beeton's *Dictionary of Geography*, London (preface 1868); and Cartee's *Elements of Physical and Political Geography*, Boston, 1855. Though the first-named is important for England, it surely has not affected American pronunciation; and the chief popular British dictionary — Cassell's — accents the word on the first syllable.

Those who stress the *o* often give the so-called "Italian" value to the final vowel instead of the more common *-uh* — [â] instead of [ə]. Yet *Io'wuh* is common, and may be listed as a variant of number two.

Among Iowans themselves the second-syllable stress of the name of their State is very rare. So far as "correctness" is concerned, this pronunciation may then be ruled out, for it is a general and a sound lexicographical principle that the pronunciation of a place-name is determined by the consensus of usage where the word is most used, *i. e.*, in the place that it names.

This principle will also dispose of number three. *I'ower* is perhaps scarcely important enough to deserve a place in our list, as it represents merely the application of a New England dialectal peculiarity to the word under consideration.

The fourth pronunciation — *I'owah* — is the result of the efforts of the purists to correct what seemed to them the false pronunciation *Ioway*. There was a mistaken belief that the Indians pronounced the final vowel like *a* in *father*, and this final sound was also affected by the pedantic enthusiasm for the bastard sound foisted upon *a* in *ask* [à]. But it was analogy upon which the purist-reformers chiefly depended. They cited the fact that in Christian names like *Ezra*, *Anna*, and *Elisha*, and in place-names like *America*,

Africa, and *Minnesota*, the final *-a* was not pronounced *ay*. *Joshuay* was an illiterate pronunciation; therefore *Ioway* must be illiterate. The leaders in this crusade were the school teachers, and it seems to have begun in the 'sixties and to have been especially important in the 'seventies and 'eighties. It still continues, as may be seen in our list of recorded pronunciations.⁸

This continuous effort succeeded in greatly weakening the hold of *Ioway*; but in substituting a slack vowel for the tense *-ay*, the purists had invited its eventual reduction to [ə], the actual sound of *-a* in *Ezra* — a fate that usually attends a slack vowel in an unaccented syllable. Thus we have the pronunciation *Iowuh*, listed as number five, and sometimes heard from platforms and in careful speech. The second vowel is like the *o* in *approbation*.

The sixth pronunciation, *Iuhwuh*, represents a slackening of the tongue and an unrounding of the lips for the middle vowel. This is the pronunciation listed as standard by Professor George Philip Krapp.⁹ A study of the pronunciation of the word by fifty students in the University of Iowa hailing from different parts of the State resulted in forty-six uses of this form and four of *Iowuh*. It is believed, then, that the standard pronunciation in the State is *I'uhwuh* [aiəwə]. Of course, the difference between numbers five and six is so slight as not to be commonly noticeable.¹⁰

Dictionaries, geographies, and gazetteers, which seem to have, ordinarily, a predilection for pronunciations slightly more careful than those in common use, now generally

⁸ See note fourteen.

⁹ Krapp's *Pronunciation of Standard English in America*, p. 72.

¹⁰ This represents a slight change from the conclusion reached in my brief article on the subject in *The Palimpsest* for October, 1924. When the speaker is more self-conscious, he is likely to use number five.

record the pronunciation as *Iowuh*, without a secondary usage, though some of the geographies insist on the "Italian" -*a* final. The confusion of diacritical markings in America could not be better illustrated than by the fact that in the ninety-two records of pronunciation that I have found for the word Iowa there are thirty-three different combinations of markings.¹¹ The final -*a* may have one or two dots over or under it, or both over and under, a breve over or under it, etc. The game is capable of many variations. The only marking which occurs more than four times in my list is the very simple one of Webster's dictionary of 1848 (a revision of the 1840 Webster). It appears fifteen times in my list. The thirty-three markings referred to are evidently intended to record only seven or eight pronunciations,¹² of which three receive most of the votes. Those three are the familiar *Iowuh* [·aiôwə], which has a plurality of all votes cast, and the two forms of the more puristic *Iowah* indicated the one by two dots and the other by one dot over the -*a* [·aiôwâ, ·aiôwà].

What, then, is the correct pronunciation? This question necessitates an inquiry into the standards of correctness for place-names. There is, after all, but one standard for the pronunciation of any word, and that is the consensus of

¹¹ See note fourteen.

¹² The pronunciations referred to are: (1) I'owuh [·aiôwə], (2) I'owä [·aiôwä], (3) I'owâ [·aiôwâ], (4) I'owă [·aiôwə], (5) I'oway [·aiôwê], (6) Iowaw' [aiôwâ], (7) Io'wa [aiôwə], (8) I'oa [·aiôə]. It may be observed in regard to these pronunciations that (2) and (3) are practically identical, as in an unstressed syllable the difference between the so-called full Italian and half Italian *a* is negligible; or, to speak in terms of the diacritical markers, there is practically no difference between unstressed ä and unstressed â. When the old Scotchman's daughter remonstrated with him about his broad pronunciation of the word *difference*, Sandy replied, "Ah, lass, I caun't see the dufference between dufferance an' dufference!" But to return: numbers (4) and (6) — the latter appearing but once — never had any currency, and (8) — which also appears but once — is impossible for popular usage. This leaves (1), (2), (5), and (7).

usage. Now if this consensus is not clear, that is, if there appears to be a division in common usage, the conscientious seeker after correctness may do one of two things: he may be guided by the usage of some person or some group of persons that he respects, (and the size of the group often determines the choice), or he may go to his favorite dictionary for its "preferred" pronunciation. He may choose the latter guidance because he feels that in the dictionary the god of words speaks, and the three legs of his dictionary-stand are the tripod of the sibyl; but if he should, in an unwary moment, consult the preface of this sacred tome, he would find the full and frank acknowledgment that, after all, the lexicographer is trying merely to record usages as he has carefully observed them, and that the *vox dei* he thought he heard is only the *vox populi*. So that whether he follows his preferred group or his dictionary, he is imitating the popular example — he is yielding to social coercion.

This may seem to some a very weak and essentially wrong procedure. It may seem better to determine the essentially "right" pronunciation from etymology and the history of the word, and then stick to it in spite of ridicule — say *Iooway*, for instance. But the purpose of language is the interchange of thought among very large groups without any lost motion or friction caused by the use of strange or difficult words or pronunciations; so that the ideal speech, from a practical standpoint, is that which is perfectly and completely familiar to all hearers. Thus the ethics of pronunciation may be said not only to forbid idiosyncrasies, but to discourage all independence of usage, at least without a definite compensation in emphasis.

There is no need, however, for the Iowa legislature to attempt to bring about uniformity as did the Arkansas legislature when it jointly resolved, after hearing reports from certain learned societies of that State, that "the only

true pronunciation of the name of the state, in the opinion of this body, is that received by the French from the native Indians, and committed to writing in the French word representing the sound" as *Arkansaw*, "being the pronunciation formerly universally, and now most commonly used."¹³ In Iowa the Indian pronunciation is not the one "most commonly used"; nor are the variations in usage great enough to warrant legislative interference. But even if the corn song, or perchance an unexpected wave of interest in Amerind etymologies, should bring the *Ioway* pronunciation into competition again, a legislative effort at fiat language would have little to commend it.¹⁴

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IOWA CITY IOWA

¹³ Sandels and Hill's *Arkansas Digest of Statutes*, p. xi.

¹⁴ This list, though only a beginning, is perhaps extensive enough to illustrate tendencies. No attempt has been made to get the latest edition of a given work, though the latest edition was always used when it was at hand. Different editions are not listed unless the record of the pronunciation itself varies in different editions. If the title-page bears no date, the latest copyright date is used. An effort has been made to present the markings, syllable division, and other features exactly as in the original.

1845 I-o-waw' Fowle & Fitz's *Elementary Geography for Massachusetts Children*.

1846 I-o-wa Worcester's *Dictionary*.

1848 I'-o-wa Webster's *American Dictionary*.

1851 I'-o-wa Webster's *American Dictionary*.

1855 Iō'wa Cartee's *Elements of Physical and Political Geography*.

1855 I'-o-wa Colton and Fitch's *Modern School Geography*.

1862 I'-o-wa Monteith's *Manual of Geography*.

1863 I'-o-wa White's *Class Book of Geography*.

1864 I'-o-wa Mitchell's *New Primary Geography*.

1865 I'-ow-a Warren's *Primary Geography*.

1865 I'o-wa Webster's *American Dictionary*.

1866 I'-o-wa Colton & Fitch's *Introductory Geography*.

1866 I'o-wah Mitchell's *Descriptive Geography*.

1867 I'o-wah Mitchell's *School Geography* (revised).

1868 I-o'-wa Beeton's *Dictionary of Geography* (London; date is that of preface).

- 1869 I'-o-wa Monteith's *Physical and Intermediate Geography*.
- 1870 I' ð wə Guyot's *Intermediate Geography*.
- 1870 I'-o-wā *Key to Cornell's Outline Maps* (for instructor).
- 1870 I' ɔ-wə *Eclectic Primary Geography*.
- 1870 I'-o-wa Goodrich's *Pictorial History of the United States*.
- 1871 I' o-wa Maury's *World We Live In*.
- 1873 I'-o-wa Guyot's *Common-School Geography*.
- 1875 I' o-wah Colton's *New Introductory Geography*.
- 1875 I' o-wə Swinton's *Elementary Course in Geography*.
- 1875 I' o-wa Swinton's *Complete Course in Geography*.
- 1877 I' o wa Harper's *Introductory Geography*.
- 1878 I' o-wah Mitchell's *Modern Atlas*.
- 1880 I' o-wah Hall's *Our World* No. II.
- 1881 I' o-wah Mitchell's *New International Geography*.
- 1882 I' o-wa Swinton's *Introductory Geography*.
- 1882 I' ð wə Guyot's *New Intermediate Geography*.
- 1884 I' ð wə Webster's *American Dictionary*.
- 1885 I' o wā Monteith's *Complete Geography* (Barnes).
- 1886 I' o wə Lippincott's *Pronouncing Gazetteer*.
- 1886 I'-ð-wa Warren's *New Brief Course in Geography*.
- 1887 I' o-wah Hall's *Our World*.
- 1887 I'-ð-wa Warren's *Common School Geography* (revised).
- 1888 I' o-wa Redway's *Elementary Geography* (Butler).
- 1889 I' o wa Monteith's *Comprehensive Geography*.
- 1895 I' ð-wə Frye's *Grammar School Geography*.
- 1895 I' ð-wə Frye's *Complete Geography*.
- 1895 I' o wā Monteith's *Introduction to the Manual of Geography*.
- 1896 I' o wa Sadlier's *Excelsior Geography* No. 2.
- 1896 I' o-wə *Eclectic Elementary Geography*.
- 1896 I' owa Appleton's *Standard Geography*.
- 1896 I' o wa Harper's *School Geography*.
- 1897 I'-ð-wā Gore's *Manual of Geography*.
- 1897 I' ð-wa Frye's *Primary Geography*.
- 1898 I' ð-wə Frye's *Elements of Geography*.
- 1900 I'-ð-wa Tarr and McMurry's *Home Geography*, Book I.
- 1900 I'-ð-wa Tarr and McMurry's *Geography*, Book II.
- 1900 I' ð-wā Wagner's *New Pacific School Geography*.
- 1900 I'-ð-wā Tarbell's *Introductory Geography* (Werner).
- 1900 I' ð-wa Davis & Dean's *Elementary Inductive Geography*.
- 1900 I' ð-wə Morton's *Elementary Geography*.
- 1901 I'-ð-wə Tarr and McMurry's *Geography*, Book III.
- 1901 I' o-wā Morton's *Advanced Geography* (Potter).
- 1902 I' ð wə Roddy's *Elementary Geography*.
- 1902 I'-ð-wə Tarr and McMurry's *Complete Geography*.
- 1902 I' ð-wa Davis & Dean's *Inductive Geography*.
- 1902 I' ð wa McBride's *Complete Geography*. (a as in at).

- 1903 I' ō wā McBride's *Elementary Geography*.
 1904 I' o-wā Dodge's *Principles of Geography*, Book III.
 1904 I' ō-wā Dodge's *Elements of Continental Geography*.
 1904 I' ō-wā Dodge's *Elementary Geography*.
 1906 I' ō-wā Frye's *First Steps in Geography*.
 1906 I' o wā Maury's *New Complete Geography*.
 1907 I' ō-wā Maury's *Elements of Geography*.
 1907 I' o-wā Swinton's *Primary Geography*.
 1909 I' o-a *Encyclopedia Americana*.
 1910 I' ō-wā Frye's *First Book in Geography*.
 1910 I' ō-wā Tarr and McMurry's *New Geography*, Book I.
 1910 I' ō-wā Tarr and McMurry's *New Geography*, Book II.
 1911 I' ō-wā Dodge's *Advanced Geography*.
 1914 Io' wā Chambers' *Concise Gazetteer of the World* (London).
 1914 I' ō-wā Phyfe's *Eighteen Thousand Words Often Mispronounced*.
 1914 I' ō-wā Century *Cyclopedia of Names*.
 1915 I' ō-wā *New International Encyclopedia*.
 1919 I' o-wā Cassell's *New English Dictionary* (London).
 1919 aI' o-wə; I' o-wā Vizetelly's *Desk Book of 25,000 Words Frequently Mispronounced*.
 1920 I' ō-wā Mackey's *Pronunciation of 10,000 Proper Names*.
 1920 I' o-wā Laird & Lee's *School Webster Dictionary*.
 1920 I' ō-wā Frye's *New Geography*, Book I.
 1920 I' o-wā Brigham & McFarlane's *Essentials of Geography*, First Book.
 1921 I' ō-wā McMurry & Parkins' *Elementary Geography*.
 1921 I' ō-wā Smith's *Human Geography*.
 1922 I' ō-wā McMurry & Parkins' *Advanced Geography*.
 1923 I' ō-wā Webster's *New International Dictionary*.
 1923 ai' c-wə; I' o-wā Funk & Wagnall's *New Standard Dictionary*.
 No date I' o-wā Sadlier's *Excelsior Introduction to Geography* (probably about 1896).

A study of this list will show the dictionary markings to have been the ruling factors. In the above list markings occurring in the various editions of Webster and Worcester have been recorded only in those years where a change has taken place. The writer has not been able to examine a complete file of either of these dictionaries, but from an examination of twenty-three editions of Webster the following incomplete record is made:

- 1848-1849 I' o-wā (two examined), Revision of 1847. American.
 1851-1854 I' o-wā (four examined).
 1856-1859 The word omitted from geographical list (three examined).
 1865-1881 I' o-wā (eight examined). Revision of 1864, the "unabridged."
 1884-1908 (?) I' ō-wā (three examined). International 1891.
 1910-1923 I' ō-wā (three examined). Revision of 1909. New International.

In the eleven editions of Worcester, 1846-1890, examined there is no variation in the marking. In Worcester's *Gazetteer of the United States* (1818) no pronunciations were given.

THE EXECUTIVE DEPARTMENT OF GOVERN- MENT AS PROVIDED BY THE CON- STITUTION OF IOWA

The executive department is that branch of the government to which is entrusted the duty of law enforcement, as distinguished from the legislative department which makes the law, and the judicial department which interprets it. The work of the executive department, however, includes more than the concern of law enforcement: it involves the making of important decisions, the exercise of discretion and judgment, and the formulation of constructive policies of administration and control.

In many of the State Constitutions the executive power is vested in the Governor, or chief executive, and a number of other officers who are usually chosen by the people and directly responsible to them for their acts. Where this is true the Constitution generally provides that the executive power of the State shall reside in the Governor, Lieutenant Governor, Secretary of State, and so on.¹ As a result of such provision the importance of the Governor's position as the head of the administration of the government is greatly lessened, for in regard to these offices he does not possess the power of removal in case of incompetency and furthermore he can neither direct nor discipline these officers who are elected by the people and responsible only to them for their acts. Yet it devolves upon the Governor to see to it that the laws are faithfully executed, that constructive policies of administration are devised, and that they are efficiently administered.

¹ *Index Digest of State Constitutions*, prepared for the New York State Constitutional Convention Commission, 1915, pp. 679-681.

THE EXECUTIVE DEPARTMENT PROVIDED BY
THE ORGANIC ACT OF 1838

The Organic Act of June 12, 1838, under which that portion of the Wisconsin Territory lying "west of the Mississippi river and west of a line drawn due north from the headwaters or sources of the Mississippi to the territorial line" was organized into the Territory of Iowa, provided that "the Executive power and authority in and over the said Territory of Iowa, shall be vested in the Governor, who shall hold his office for three years, unless sooner removed by the President of the United States."²

Under this covenant the Governor enjoyed almost royal power for he was made the central figure and chief authority in the government and was responsible only to the President of the United States for his acts. Not only was the Governor the chief executive and administrator; he was also an important part of the law-making body, for the legislative power was vested in the Governor and the Legislative Assembly, and the Governor enjoyed the power of absolute veto over all legislative acts. Owing to the free use of this power by the first Territorial executive — Robert Lucas — it was modified by Congress in 1839 so as to give to the Governor only a limited veto power.³

The powers and duties of the Territorial Governor of Iowa as set forth in the Organic Act were: to reside within the Territory which he governed; to be commander-in-chief of the militia; to perform the duties and receive the compensation of Superintendent of Indian Affairs; to approve all laws passed by the Legislative Assembly; to grant pardons for offenses against the laws of the Territory, and temporary reprieves for offenses against the laws of the United States; to commission all officers appointed to office

² *Laws of the Territory of Iowa, 1838-1839*, pp. 31, 32.

³ Horack's *The Government of Iowa*, p. 28.

under the laws of the Territory; to see to it that the laws were faithfully executed; to declare the results of elections and to order a new election in case of a tie in order to fill the vacancy made by the tie; to nominate and, by and with the advice and consent of the Legislative Council, appoint all judicial officers, justices of the peace, sheriffs, and all militia officers except those of the staff, and all civil officers not otherwise provided for; to fill vacancies occurring during the recess of the Council; and to take an oath or affirmation to support the Constitution of the United States, and to faithfully discharge the duties of the office.

The first Governor was also to designate the time and place of meeting of the first Legislative Assembly. With the aid of the Legislative Assembly he was given authority to locate and establish the seat of government for the Territory, which, however, would always be subject to change in the same manner that it was established. Twenty thousand dollars was also placed at the disposal of the Governor and Legislative Assembly to be expended by them for the purpose of erecting buildings for governmental purposes at the site chosen for the capital. Five thousand dollars additional were appropriated by the Federal government and placed in charge of the Governor to be used for the purchase of a library to be kept at the seat of the government. Furthermore, the first Territorial Governor was given power to define temporarily the judicial districts of the Territory, and to assign the judges to the several districts as well as to designate the time for holding court in the several counties.

The compensation of the Governor of Iowa Territory was fifteen hundred dollars annually. In addition to this salary he received one thousand dollars as Superintendent of Indian Affairs.⁴

⁴ *Laws of the Territory of Iowa, 1838-1839*, pp. 31-40.

Under the Organic Act of 1838 the government of the Territory of Iowa had operated but eight months when on March 3, 1839, President Martin Van Buren approved two separate acts for its amendment. The first of these acts provided that every bill which should have passed the Council and the House of Representatives should be presented to the Governor of the Territory before it became a law. If he approved he should sign it, and if not, he should return it with his objections to the house in which it originated. The act further provided that in case a bill was vetoed by the Governor, it might be passed over his veto by a vote of two-thirds of both houses of the Legislative Assembly. Bills not returned within three days (Sundays excepted) following their presentation to the Governor became law the same as if they had received his signature except in cases where the Legislative Assembly adjourned at such time as to prevent their return. The second act also limited the power of the Governor. It authorized the Legislative Assembly "to provide by law for the election or appointment of sheriffs, judges of probate, justices of the peace, and county surveyors".⁵

The above amendments were the outcome of the friction between the Legislative Assembly and Governor Robert Lucas, who vetoed without hesitancy every act that did not meet with his approval. A committee headed by James W. Grimes remonstrated against the action of the Governor, but in vain. A memorial was then prepared to Congress in which the Legislative Assembly of the Territory requested an amendment to the Organic Act so as to limit the veto power of the executive. Another memorial was addressed to President Van Buren in which the faults of Governor Lucas were enumerated and a request for his immediate removal set forth. The outcome of all this was the passage

⁵ *United States Statutes at Large*, Vol. V, pp. 356, 357.

of the acts limiting the veto power of the Territorial executive.⁶

PROVISIONS FOR THE EXECUTIVE DEPARTMENT IN THE
CONSTITUTION OF 1844

The Territorial government of Iowa had been in operation but a little over two years when the question of calling a constitutional convention was submitted to the people for their approval. The vote taken at the August election of 1840 showed that the people were strongly opposed to State organization. The question of a constitutional convention was again submitted in 1842, and again by their vote the people expressed their desire to retain Territorial rather than State organization. The political leaders of the Territory were, however, not to be easily shaken from their purpose of seeing Iowa become a member of the Federal Union. They therefore succeeded for a third time, in 1844, in submitting to the electorate the question of calling a constitutional convention and at the township elections in April the people voted by a large majority in favor of such a convention. The vote at this election stood 7221 in favor of a convention to draft a Constitution for Iowa and 4308 against it.⁷

Under the provisions of the acts of February 12, 1844, and June 19, 1844, seventy-three delegates were elected to a Constitutional Convention to be held at the seat of government beginning on the first Monday in October, 1844, and a majority of the delegates chosen at the August election assembled at the Capitol building in Iowa City on October 7, 1844. Within a few days all of the delegates had appeared upon the scene of action and presented their credentials

⁶ Shambaugh's *History of the Constitutions of Iowa*, pp. 134-144.

⁷ Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 133-149.

except Mr. Morton of Van Buren County, who was permanently absent from the Convention.⁸

During the permanent organization of the Convention Shepherd Leffler was unanimously elected to the presidency thereof, and in some very fitting and appropriate remarks he expressed the hope that "Iowa, young, beautiful and blooming as she now is; endeared to us by every attachment which can bind us to our country, may at no distant day, for everything that is great, noble or renowned, rival if not surpass the proudest State of the American confederacy". The Convention then proceeded to prepare for the undertaking of the various phases of Constitution drafting. A number of standing committees were provided for, important among which was the Committee on the Executive Department. As members of this committee President Leffler appointed Robert Lucas, Enos Lowe, Caleb B. Campbell, Gideon S. Bailey, Stephen B. Shelledy, David Galland, and Lyman Evans.⁹ The report of this select group was made on the fourth day of the session and consisted of twenty-four sections. As presented to the Convention by the chairman, Robert Lucas, the report read as follows:

OF THE EXECUTIVE DEPARTMENT

1. The Supreme Executive power shall be vested in a Governor, who shall hold his office for four years, and a Lieutenant Governor shall be chosen at the same time and for the same term.

2. No person shall be eligible to the office of Governor or Lieutenant Governor who is not a citizen of the United States, been a resident of the State two years next preceding the election, and who has not attained the age of thirty years at the time of said election.

⁸ Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 143-149; *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 3-6; Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 7, 8.

⁹ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 6-14.

3. The Governor and Lieutenant Governor shall be elected by the electors at the times and places of choosing members of the Legislature. The persons having the highest number of votes for Governor and Lieutenant Governor shall be elected; but in case two or more have an equal and the highest number of votes for Governor or Lieutenant Governor, the Legislature shall, by joint ballot, choose one of said persons so having an equal and the highest number, for Governor or Lieutenant Governor.

4. The returns of every election for Governor and Lieutenant Governor shall be sealed up and transmitted to the Seat of Government by the returning officers, directed to the President of the Senate, who shall open and publish them in the presence of the members of both houses.

5. No person shall be eligible to the office of Governor or Lieutenant Governor, more than eight years in any term of twelve years.

6. The Governor shall be commander-in-chief of the militia and of the army and navy of this State.

7. He shall transact all executive business with the officers of government, civil and military; and may require information in writing from the officers in the executive department upon any subject relating to the duties of their respective offices.

8. He shall take care that the laws be faithfully executed.

9. When any officer, the right of whose appointment is by this Constitution vested in the General Assembly, shall, during the recess die, or his office by any means become vacant, the Governor shall have power to fill such vacancy, by granting a commission, which shall expire at the end of the next session of the Legislature.

10. He may, on extraordinary occasions, convene the General Assembly by proclamation, and shall state to them, when assembled, the purpose for which they shall have been convened.

11. He shall communicate by message, to the legislature at every session, the condition of the State, and recommend such matters to them as he shall deem expedient.

12. In case of disagreement between the two houses, with respect to the time of adjournment, the governor shall have the power to adjourn the General Assembly to such time as he may think proper; *Provided*, It be not to a period beyond the annual meeting of the legislature.

13. In case of the impeachment of the governor, his removal

from office, death, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant Governor until such disability shall cease, or the vacancy be filled.

14. If, during the vacancy of the office of Governor, the Lieutenant Governor shall be impeached, displaced, resign, die, or be absent from the State, the President *pro tempore* of the Senate shall act as Governor until the vacancy be filled; and should a vacancy occur by the impeachment, death, resignation, or absence from the State of the President *pro tempore* of the Senate, the speaker of the House of Representatives shall discharge the duties of Governor during the existence of such vacancy.

15. The Lieutenant Governor shall, by virtue of his office, be President of the Senate; in committee of the whole he may debate on all questions; and when there is an equal division he shall give the casting vote.

16. No member of Congress, nor any other person, holding office under the United States, or this State, shall execute the office of Governor.

17. When the office of Governor, or Lieutenant Governor, becomes vacant, the person exercising the powers of Governor, for the time being, shall give notice thereof, and the electors shall, at the next succeeding general election for members of the Legislature, choose a person to fill such vacancy.

18. The Governor shall have power to grant reprieves and pardons after conviction, except in cases of impeachment.

19. The Governor shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished, during the time for which he shall have been elected.

20. The Lieutenant Governor, except when acting as Governor, and the President of the Senate *pro tempore*, shall each receive the same compensation as shall be allowed to the Speaker of the House of Representatives.

21. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called *the Great Seal of the State of Iowa*.

22. All grants and commissions shall be in the name, and by the authority of the people of Iowa, sealed with the seal, signed by the Governor, and countersigned by the Secretary of State.

23. A Secretary of State shall be appointed by joint ballot of

both houses of the General Assembly, who shall continue in office four years if he shall so long behave well; he shall keep a fair register of all the official acts and proceedings of the Governor, and shall, when required, lay the same, and all papers, minutes, and vouchers relative thereto, before either branch of the Legislature, and shall perform such other duties as shall be assigned him by law.

24. The first Governor and Lieutenant Governor shall hold their respective offices until the first Monday of December, one thousand eight hundred and forty-eight, and until their successors shall be elected and qualified to office, and forever after, the Governor and Lieutenant Governor shall hold their offices for the term of four years, and until their respective successors shall be severally elected and qualified to office.

One hundred copies of this report were ordered to be printed. Until this could be done it was laid aside for future consideration.¹⁰ At least half of the provisions of this report were copied almost verbatim from the Constitution of Michigan of 1835, while others were taken from the Constitution of Ohio of 1802.¹¹

On Tuesday afternoon, October 15th, the report was taken up for consideration and it was ordered that it should not be discussed in Committee of the Whole but should immediately be acted upon by the Convention. Little change was made in the original report of the standing committee, sixteen sections being adopted without discussion or amendment. Six sections, namely, sections 1, 9, 12, 18, 23, and 24 of the original report were amended, and sections 5 and 17 were dropped entirely.

Section five provided that "No person shall be eligible to the office of Governor or Lieutenant Governor, more than eight years in any term of twelve years." Section seventeen, which was also stricken from the report, provided for

¹⁰ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 24-26.

¹¹ Poore's *The Federal and State Constitutions and Colonial Charters of the United States*, Vol. I, pp. 986, 987, Vol. II, pp. 1457, 1458.

the filling of vacancies in the office of Governor or Lieutenant Governor at the next general election. This provision was of no consequence when the terms of Governor and Lieutenant Governor were reduced from four to two years.

In Convention section one providing for the office of Governor and Lieutenant Governor and for their term of office was taken up and amended by reducing the term of these offices from four to two years. It was also proposed to amend the section so as to eliminate the office of Lieutenant Governor. Wm. W. Chapman was of the opinion that this office was non-essential, and that to eliminate it would be an act of economy on the part of the Convention.¹²

Section nine providing for the filling of vacancies in offices for which there was no such provision was redrafted by the Committee on Revision but not changed a great deal so far as its purport was concerned. As revised by this committee the section read: "When any office shall, from any cause become vacant, and no mode is provided by the constitution and laws for filling such vacancy, the Governor shall make an appointment for such vacated office, which shall expire at the end of the next session of the General Assembly, or at the next election by the people." The provision that such vacancies might be filled by popular election was an enlargement of the section as it was originally reported.¹³

The next section to be amended was number twelve of the original report which gave to the Governor the power to adjourn the legislature in case of disagreement between the two houses in this respect, but not for a period longer than until the time for the next annual meeting of the legislature.

¹² *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1844*, pp. 24-26, 61, 62, 64, 195-197; *Shambaugh's Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, p. 50.

¹³ *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1844*, pp. 157, 163.

The amendment to this section omitted the word annual because the sessions of the legislature as provided by the Constitution were to be biennial instead of annual. The amendment was concurred in and the section adopted.¹⁴

Section fifteen made the Lieutenant Governor President of the Senate and gave to him the right to debate all questions as well as to cast a deciding vote in case of a tie. An amendment proposed to take from him the right to debate all questions, but the Convention refused to concur and the proposal failed of adoption.¹⁵

Section eighteen of the report, which read: "The Governor shall have power to grant reprieves and pardons after conviction, except in cases of impeachment", was amended by the Convention by adding thereto the following phrase: "in such manner and upon such conditions as may be prescribed by law."¹⁶ This subjected the power of the Governor in this regard to the will of the Legislative Assembly.

The next section in the report to which the delegates took exception was section twenty-three which provided for the office of Secretary of State, the manner of his election, his term of office, and his duties. Stephen Hempstead proposed to amend this section so as to make the Secretary of State elective by the people instead of appointive by a joint ballot of both houses of the legislature. In so far as possible he wished to have all offices filled by popular vote.

George Hepner was opposed to either method. He argued that the Secretary of State was an executive officer and being such should be appointed by the Governor with

¹⁴ *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1844*, pp. 62, 63.

¹⁵ *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1844*, p. 63.

¹⁶ *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1844*, p. 63.

the consent of the Senate. Ex-Governor Lucas recognized the fact that strictly speaking the Secretary of State was an executive officer, but he also performed many acts of importance to the legislature such as the preservation of public acts and records. Therefore Mr. Lucas believed that the joint ballot of the legislature was the proper method of electing the Secretary of State.

When the vote was finally taken upon the proposition of Mr. Hempstead, it was agreed to by a large majority vote. The section was further amended by including in it the offices of Auditor of Public Accounts and Treasurer, and by making the term of all three offices two years. In its final form this section read:

A Secretary of State, Auditor of Public Accounts, and Treasurer, shall be elected by the qualified electors at the time and place of voting for Governor, who shall continue in office two years. The Secretary of State shall keep a fair register of all the official acts and proceedings of the Governor, and shall, when required, lay the same, and all papers, minutes, and vouchers relative thereto, before either branch of the Legislature, and shall perform such other duties as shall be assigned him by law.¹⁷

The next and last section of the report to be amended by the Convention was section twenty-four relating to the term of office of the first Governor and Lieutenant Governor. The amendments to this section made it include also the first Secretary of State, Auditor of Public Accounts, Treasurer, and Superintendent of Public Schools. The term of office was limited to two years after the first Monday in January. No further changes being proposed the report was adopted with the amendments as indicated.¹⁸

¹⁷ *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1844*, pp. 63, 64, 157, 158, 163, 197; Shambaugh's *Fragments of Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 50, 51.

¹⁸ *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1844*, pp. 64, 65, 157, 163; Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, p. 51.

Owing to the fact that sections five and seventeen were dropped from the report, all sections beginning with section six and including section sixteen were reduced one in number. Thus section six became section five, section seven, section six, and so on. Likewise all sections beginning with section eighteen to the twenty-fourth inclusive were reduced two in number. The article as adopted read:

OF THE EXECUTIVE DEPARTMENT

1. The Supreme Executive power shall be vested in a Governor, who shall hold his office for two years, and a Lieutenant Governor shall be chosen at the same time and for the same term.

2. No person shall be eligible to the office of Governor or Lieutenant Governor who is not a citizen of the United States, been a resident of the State two years next preceding the election, and who has not attained the age of thirty years at the time of said election.

3. The Governor and Lieutenant Governor shall be elected by the electors at times and places of choosing members of the Legislature. The persons having the highest number of votes for Governor and Lieutenant Governor shall be elected; but in case two or more have an equal and the highest number of votes for Governor or Lieutenant Governor, the Legislature shall, by joint ballot, choose one of said persons so having an equal and the highest number, for Governor or Lieutenant Governor.

4. The returns of every election for Governor and Lieutenant Governor shall be sealed up and transmitted to the Seat of Government by the returning officers, directed to the President of the Senate, who shall open and publish them in the presence of the members of both houses.

5. The Governor shall be commander-in-chief of the militia and of the army and navy of this State.

6. He shall transact all executive business with the officers of government; civil and military; and may require information in writing from the officers in the executive department upon any subject relating to the duties of their respective offices.

7. He shall take care that the laws be faithfully executed.

8. When any office shall, from any cause, become vacant, and

no mode is provided by the constitution and laws for filling such vacancy, the Governor shall make an appointment for such vacated office, which shall expire at the end of the next session of the General Assembly, or at the next election by the people.

9. He may, on extraordinary occasions, convene the General Assembly by proclamation, and shall state to them, when assembled, the purpose for which they shall have been convened.

10. He shall communicate, by message to the Legislature at every session, the condition of the State, and recommend such matters to them as he shall deem expedient.

11. In case of disagreement between the two houses with respect to the time of adjournment, the Governor shall have the power to adjourn the General Assembly to such time as he may think proper, provided it be not to a period beyond the next meeting of the Legislature.

12. In case of the impeachment of the Governor, his removal from office, death, resignation or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant Governor until such disability shall cease, or the vacancy be filled.

13. If, during the vacancy of the office of Governor, the Lieutenant Governor shall be impeached, displaced, resign, die, or be absent from the State, the President pro tempore of the Senate shall act as Governor until the vacancy be filled; and should a vacancy occur by the impeachment, death, resignation, or absence from the State of the President pro tempore of the Senate, the Speaker of the House of Representatives shall discharge the duties of Governor during the existence of such vacancy.

14. The Lieutenant Governor shall, by virtue of his office, be President of the Senate; in committee of the whole he may debate on all questions; and when there is an equal division he shall give the casting vote.

15. No member of Congress, nor any other person holding office under the United States or this State, shall execute the office of Governor.

16. The Governor shall have power to grant reprieves and pardons, and commute punishments after conviction, except in cases of impeachment, in such manner and upon such conditions as may be prescribed by law.

17. The Governor shall, at stated times, receive for his services

a compensation which shall neither be increased nor diminished during the time for which he shall have been elected.

18. The Lieutenant Governor, except when acting as Governor, and President of the Senate pro tempore, shall each receive the same compensation as shall be allowed to the Speaker of the House of Representatives.

19. There shall be a seal of this State, which shall be kept by the Governor and used by him officially, and shall be called the great Seal of the State of Iowa.

20. All grants and commissions shall be in the name, and by the authority of the people of Iowa, sealed with the seal, signed by the Governor, and countersigned by the Secretary of State.

21. A Secretary of State, Auditor of Public Accounts, and Treasurer, shall be elected by the qualified electors at the time and place of voting for Governor, who shall continue in office two years. The Secretary of State shall keep a fair register of all the official acts and proceedings of the Governor, and shall, when required, lay the same, and all papers, minutes, and vouchers relative thereto, before either branch of the Legislature, and shall perform such other duties as shall be assigned him by law.

22. The first Governor, Lieutenant Governor, Secretary of State Auditor of Public Accounts, Treasurer and Superintendent of public schools, shall hold their offices for two years after the first Monday in January succeeding their election, and until their successors shall be elected and qualified; and forever after the Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, Treasurer, and Superintendent of public schools, shall hold their offices for the term of two years and until their respective successors shall be elected and qualified to office.¹⁹

As soon as the completed Constitution came before the public, newspapers throughout the Territory were either loud in their praise of the new instrument of government or equally vigorous in their condemnation of it. Since the Constitution was the product of a Convention strongly Democratic, it was to be expected that the democracy of the Territory would speak highly of it. The *Iowa Standard*,

¹⁹ *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1844*, pp. 195-197.

however, a Whig publication, in its issue of November 14, 1844, offered a number of criticisms in regard to the various articles of the Constitution. Among other things it said:

We object to the proposed Constitution, first, that it mingles unwisely, and in opposition to reason, the Legislative, Popular, and Executive power. It makes the Legislature, instead of a body to enact laws, a body to *propose* laws. It makes the Governor, instead of an officer to execute laws, a judicial functionary, charged to sit in judgment upon their expediency. It grants to a power that is expressly made incompetent to create a law, full and plenary power to declare it abolished and destroyed

We object that such officers as Secretary of State, Auditor of State, and State Treasurer, are made elective by the people, when, from the nature of the qualifications required, and of the duties to be performed, those officers should clearly be selected by the Executive head of the Government.²⁰

The *Iowa Capitol Reporter* is quoted by the *Iowa Standard* as saying that the Constitution contained many things of merit while in some things it contained trifling matters to condemn. It then set forth objections to permitting the Lieutenant Governor to participate in the debates of the Senate. In the language of the *Reporter*, "It savors of the regions of absurdity, to authorize the Lieut. Governor to participate in debate and withhold from him the right of suffrage. . . . The propriety of allowing the casting vote to the Lieut. Governor, in the constitution, is at best, problematical. The idea is borrowed from the constitution of the United States, where the Senate must always, if full, consist of an equal number to sustain the balance of the States."²¹

The Constitution drafted by the Convention in 1844 was submitted to the electorate of the Territory of Iowa in

²⁰ Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 209, 210.

²¹ Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 210, 222.

April, 1845. Shortly before its submission Congress passed an act providing for the admission of Iowa into the Union which greatly reduced the boundaries of the proposed Commonwealth as set forth in the Constitution. The result was the defeat of the Constitution at the April election.

The friends of the Constitution and those who desired to see Iowa incorporated into the Union were, however, successful in securing an extra session of the legislature for the passage of an act for the resubmission of the Constitution to the people, with the provision that their acceptance of the Constitution was not to be regarded as an acceptance of the congressional boundaries. The question of ratification was again submitted to the people in August, 1845, and a second time rejected.²²

THE EXECUTIVE DEPARTMENT IN THE CONSTITUTION OF 1846

The Constitution drawn up by the Convention of 1844 having been twice rejected by the electorate, the members of the Territorial legislature who met at the State House in December, 1845, still found themselves confronted with the task of State organization. The chief objection to the idea of statehood was due largely to the boundaries set forth in the act of admission of March 3, 1845. Could the people have had the "Lucas boundaries" as provided for in the Constitution of 1844 there is little doubt but that the first Constitution would have been ratified.²³

Having erred once by submitting a Constitution to Congress before it had been ratified by the people, the Territorial legislature now set about drawing up an act in which their error would not be repeated. This act, providing for

²² Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 133, 134.

²³ Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 185, 186; Shambaugh's *History of the Constitutions of Iowa*, pp. 266-272, 285.

the election of delegates to a Convention to form a Constitution, was approved on January 17, 1846. Thirty-two delegates were to be elected at the April election. Following their election they were directed to meet at the Capitol building at Iowa City on the first Monday of May, 1846.²⁴

In accordance with these directions, the delegates assembled at Iowa City on Monday, May 4, 1846. Eager to proceed to the task of redrafting the Constitution of 1844, the delegates were not long in effecting their permanent organization. Enos Lowe of Des Moines County was chosen President over Stephen B. Shelledy of Mahaska County by a vote of nineteen to nine. To facilitate the Convention's work the rules of the previous Convention were adopted and six standing committees provided for. Among these committees was the Committee on the Executive Department. Those announced by President Lowe as members of this committee were: Samuel A. Bissell, Alvin Saunders, Sylvester G. Matson, Erastus Hoskins, and Stewart Goodrell.²⁵

The report of the Committee on the Executive Department was made on the third day following its appointment, and was largely a duplication of the article as it appeared in the rejected Constitution. The chief point of difference—in fact the only material change of consequence—was the omission of the office of Lieutenant Governor. As presented the report consisted of nineteen sections and read as follows:

EXECUTIVE DEPARTMENT

1. The supreme executive power of this State shall be vested in a Chief Magistrate, who shall be styled the Governor of the State of Iowa.

²⁴ Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 187-190.

²⁵ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1846, pp. 23-30.

2. The Governor shall be elected by the qualified electors, at the time and place for voting for members of the Legislature, and shall hold his office two years from the time of his installation, and until his successor shall be qualified.

3. No person shall be eligible to the office of Governor, who is not a citizen of the United States, been a resident of the State two years next preceding the election, and who has not attained the age of thirty years at the time of said election.

4. The returns of every election for Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the House of Representatives, who shall, during the first week of the session, open and publish them in the presence of both houses of the General Assembly. The person having the highest number of votes shall be Governor; but in case any two or more have an equal and the highest number of votes, the Legislature shall, by joint ballot, choose one of said persons so having an equal and the highest number of votes, for Governor.

5. The Governor shall be commander-in-chief of the militia, the army, and navy, of this State.

6. He shall transact all executive business with the officers of Government, civil and military, and may require information in writing from the officers of the Executive Department, upon any subject relating to the duties of their respective offices.

7. He shall take care that the laws be faithfully executed.

8. When any office shall from any cause become vacant, and no mode is provided by the constitution and laws for filling such vacancy, the Governor shall have power to fill such vacancy, by granting a commission, which shall expire at the end of the next session of the Legislature, or at the next election by the people.

9. He may, on extraordinary occasions, convene the Legislature by proclamation, and shall state to both houses, when assembled, the purpose for which they shall have been convened.

10. He shall communicate by message to the Legislature, at every session, the condition of the State, and recommend such matters as he shall deem expedient.

11. In case of disagreement between the two houses, with respect to the time of adjournment, the Governor shall have power to adjourn the Legislative Assembly to such time as he may think proper; provided it be not to a period beyond the next meeting of the Legislature.

12. No person who is a member of Congress, or holding any other office under the United States or this State, shall execute the office of Governor.

13. The Governor shall have power to grant reprieves and pardons, and commute punishments after conviction, except in cases of impeachment, in such manner and upon such conditions as may be prescribed by law.

14. The Governor shall, at stated times, receive for his services, a compensation which shall neither be increased nor diminished during the time for which he shall have been elected.

15. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called the Great Seal of the State of Iowa.

16. All grants and commissions shall be in the name and by the authority of the people of the State of Iowa, sealed with the seal, signed by the Governor, and countersigned by the Secretary of State.

17. A Secretary of State, Auditor of Public Accounts, and Treasurer, shall be elected by the qualified electors, at the time and place of voting for Governor, who shall continue in office two years. The Secretary of State shall keep a fair register of all the official acts of the Governor, and shall, when required, lay the same, together with all papers, minutes, and vouchers relative thereto, before either branch of the Legislature, and shall perform such other duties as shall be assigned him by law.

18. In case of the impeachment of the Governor, his removal from office, death, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Secretary of State, until such disability shall cease, or the vacancy be filled.

19. If, during the vacancy of the office of Governor, the Secretary of State shall be impeached, displaced, resign, die, or be absent from the State, the powers and duties of the office of Governor shall devolve upon the President of the Senate; and should a vacancy occur by impeachment, death, resignation, or absence from the State, of the President of the Senate, the Speaker of the House of Representatives shall act as Governor till the vacancy be filled.²⁶

The usual number of copies were ordered to be printed

²⁶ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1846, pp. 54-56.

and until these could be had the report was tabled for future consideration.

On Wednesday afternoon, May 13th, the Article on the Executive Department was taken up and considered by the Convention. Out of the nineteen sections of the original report ten — sections 2, 3, 4, 8, 9, 10, 11, 12, 16, and 17 — were amended by the Convention. Of these amendments only one in any way changed the original report of the standing committee so far as the Executive Department was concerned. This was the amendment to section two which changed the term of office of the Governor from two to four years. The other amendments consisted largely of changing the word "Legislature" to "General Assembly".²⁷

In its final form as adopted upon its third reading the Article on the Executive Department read:

1. The supreme executive power of this State shall be vested in a chief magistrate, who shall be styled the Governor of the State of Iowa.

2. The Governor shall be elected by the qualified electors, at the time and place of voting for members of the General Assembly, and shall hold his office four years from the time of his installation, and until his successor shall be qualified.

3. No person shall be eligible to the office of Governor, who has not been a citizen of the United States, and a resident of the State two years next preceding the election, and attained the age of thirty years at the time of said election.

4. The returns of every election for Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the House of Representatives, who shall, during the first week of the session, open and publish them in presence of both houses of the General Assembly. The person having the highest number of votes shall be Governor; but in case any two or more have an equal and the highest number of votes, the General Assembly shall, by joint vote, choose one of said persons so having an equal and the highest number of votes, for Governor.

²⁷ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1846, pp. 82-85.

5. The Governor shall be commander-in-chief of the militia, the army, and navy of this state.

6. He shall transact all executive business with the officers of government, civil and military, and may require information in writing from the officers of the executive department, upon any subject relating to the duties of their respective offices.

7. He shall see that the laws are faithfully executed.

8. When any office shall from any cause become vacant, and no mode is provided by the constitution and laws for filling such vacancy, the Governor shall have power to fill such vacancy, by granting a commission, which shall expire at the end of the next session of the General Assembly, or at the next election by the people.

9. He may, on extraordinary occasions, convene the General Assembly by proclamation, and shall state to both houses, when assembled, the purpose for which they shall have been convened.

10. He shall communicate by message to the General Assembly, at every session, the condition of the State, and recommend such matters as he shall deem expedient.

11. In case of disagreement between the two houses, with respect to the time of adjournment, the Governor shall have power to adjourn the General Assembly to such time as he may think proper, provided it be not beyond the time fixed for the meeting of the next General Assembly.

12. No person shall, while holding any other office under the United States, or this State, execute the office of Governor, except as hereinafter expressly provided.

13. The Governor shall have power to grant reprieves and pardons, and commute punishments after conviction, except in cases of impeachment.

14. The Governor shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the time for which he shall have been elected.

15. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called the Great Seal of the State of Iowa.

16. All grants and commissions shall be in the name and by the authority of the people of the State of Iowa, sealed with the great seal of this state, signed by the Governor, and countersigned by the Secretary of State.

17. A Secretary of State, Auditor of Public Accounts, and Treasurer, shall be elected by the qualified electors, who shall continue in office two years. The Secretary of State shall keep a fair register of all the official acts of the Governor, and shall, when required, lay the same, together with all papers, minutes, and vouchers relative thereto, before either branch of the General Assembly, and shall perform such other duties as shall be assigned him by law.

18. In case of the impeachment of the Governor, his removal from office, death, resignation, or absence from the state, the powers and duties of the office shall devolve upon the Secretary of State, until such disability shall cease, or the vacancy be filled.

19. If during the vacancy of the office of Governor, the Secretary of State shall be impeached, displaced, resign, die, or be absent from the state, the powers and duties of the office of Governor shall devolve upon the President of the Senate; and should a vacancy occur by impeachment, death, resignation, or absence from the state, of the President of the Senate, the Speaker of the House of Representatives shall act as Governor till the vacancy be filled.²⁸

The chief difference between the Article on the Executive Department in the Constitution of 1846 and the one in the Constitution of 1844 was the extension of the term of Governor from two to four years, and the omission of the office of Lieutenant Governor. Under the new Constitution, in case of a vacancy in the office of Governor through removal, death, resignation, or absence from the State, the duties of his office were to devolve upon the Secretary of State, whereas in the rejected Constitution they fell upon the Lieutenant Governor.

The labors of the Constitutional Convention of 1846 were completed on Tuesday morning, May 19th. It was not until August 3rd of the same year, however, that the new Constitution was presented to the people for their approval. At this election the Constitution barely escaped defeat. Of the total vote cast 9492 were in favor of the Constitution and

²⁸ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1846, pp. xi-xiii.

9036 opposed to its adoption. By the small majority of 456 votes the Constitution of 1846 received the sanction of the people of Iowa Territory. The act of admission was passed by Congress on December 24th and four days later it received the official sanction of President James K. Polk. At this time Iowa took her place in the Union on an equality with her older sister States.²⁹

THE EXECUTIVE DEPARTMENT OF GOVERNMENT AS PROVIDED
BY THE CONSTITUTION OF 1857

The opposition offered to the Constitution of 1846 was due largely to the severe restrictions placed by this instrument upon the legislature in regard to the authorization of corporations within the State. This was regarded by many as a hindrance to the development of industries and internal improvements. Many of those voting in favor of the Constitution accepted it only because they believed that the advantages to be gained by admission to the Union were sufficient to offset the objectionable features of the Constitution. Indeed the weaknesses of the Constitution under which Iowa was admitted to the Union were generally realized, but the consensus of opinion was that these faults could be remedied later. The Constitution, however, provided no means for amendment and revision could be accomplished only through the calling of a constitutional convention for this purpose. To permit the removal of the obnoxious restrictions, the General Assembly at every session from the first to the fifth attempted to pass an act providing for the submission to the people of the question of calling a convention and in 1855 the efforts of those legislators who favored constitutional revision were rewarded. The legislative act for this purpose was approved on January 24, 1855, and according to its provisions the

²⁹ Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, p. 213; Shambaugh's *History of the Constitutions of Iowa*, pp. 325-328.

question of calling a constitutional convention was submitted to the electorate at the August election. At this time 32,790 votes were cast in favor of a convention and 14,162 votes against it. By the overwhelming majority of 18,628 votes the people of Iowa sanctioned constitutional revision.³⁰

Under the provisions of the act of January 24, 1855, an election was held in November, 1856, at which time thirty-six delegates were elected to a Constitutional Convention to revise the Constitution of the Commonwealth. According to the instructions set forth in the above mentioned act, the delegates chosen to revise the Constitution assembled at the seat of government at Iowa City on Monday morning, January 19, 1857.³¹

All but three of the delegates to the Convention were present at the first roll call. Permanent organization was not effected until the second day of meeting at which time Francis Springer, the Republican nominee, was chosen to preside over the deliberations of the Convention. On the third day the rules of procedure were adopted, the number of standing committees determined upon, and their membership announced. Five members were appointed to each committee, and the first chosen was to be chairman thereof. To the Committee on the Executive Department the following members were appointed: Lewis Todhunter, Squire Ayers, A. H. Marvin, Daniel W. Price, and Hosea W. Gray. The majority of this committee were Republicans, Ayers and Price being the Democratic members. One week fol-

³⁰ Shambaugh's *History of the Constitutions of Iowa*, pp. 329-335; Erbe's *Constitutional Limitations on Indebtedness in Iowa* in *THE IOWA JOURNAL OF HISTORY AND POLITICS*, Vol. XXII, p. 378; Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 217-222.

³¹ Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 219-221; *Journal of the Constitutional Convention of the State of Iowa*, 1857, p. 3.

lowing their appointment the above committee submitted their first report to the Convention.³²

The report as submitted by the chairman, Mr. Todhunter, consisted of twenty-three sections most of which were taken in part or as a whole from this article in the Constitution of 1846. As first presented the report read:

Section 1. The supreme executive power of this State shall be vested in a Chief Magistrate, who shall be styled the Governor of the State of Iowa.

Sec. 2. The Governor shall be elected by the qualified electors at the time and place of voting for members of the General Assembly, and shall hold his office ——— years from the time of his installation, and until his successor shall be qualified.

Sec. 3. There shall be a Lieutenant Governor, who shall hold his office ——— years, and be elected at the same time of the Governor. In voting for Governor and Lieutenant Governor, the electors shall designate for whom they vote as Governor, and for whom as Lieutenant Governor. The returns of every election for Governor and Lieutenant Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the House of Representatives, who shall open and publish them in the presence of both Houses of the General Assembly.

Sec. 4. The person respectively having the highest number of votes for Governor and Lieutenant Governor, shall be declared duly elected; but in case two or more persons shall have an equal and the highest number of votes for either office, the General Assembly shall, by joint vote, forthwith proceed to elect one of the said persons Governor or Lieutenant Governor, as the case may be.

Sec. 5. Contested elections for Governor or Lieutenant Governor shall be determined by the General Assembly in such manner as may be prescribed by law.

Sec. 6. No person shall be eligible to the office of Governor or Lieutenant Governor who shall not have been a citizen of the United States, and a resident of the State two years next preceding the election, and attained the age of thirty years at the time of said election.

³² *Journal of the Constitutional Convention of the State of Iowa, 1857*, pp. 4, 5, 10, 23-25, 26, 57, 70.

Sec. 7. The Governor shall be commander-in-chief of the militia, the army, and navy of this State.

Sec. 8. He shall transact all executive business with the officers of government, civil and military, and may require information in writing from the officers of the Executive Department upon any subject relating to the duties of their respective offices.

Sec. 9. He shall take care that the laws are faithfully executed.

Sec. 10. When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the Governor shall have power to fill such vacancy, by granting a commission, which shall expire at the end of the next session of the General Assembly, or at the next election by the people.

Sec. 11. He may, on extraordinary occasions, convene the General Assembly by proclamation, and shall state to both Houses, when assembled, the purpose for which they shall have been convened; and when so convened, they shall have no power to legislate upon any subject save that suggested in the Message of the Governor.

Sec. 12. He shall communicate, by message, to the General Assembly, at every regular session, the condition of the State, and recommend such matters as he shall deem expedient.

Sec. 13. In case of disagreement between the two Houses with respect to the time of adjournment, the Governor shall have power to adjourn the General Assembly to such time as he may think proper, *Provided*, it be not beyond the time fixed for the regular meeting of the next General Assembly.

Sec. 14. No person shall, while holding any office under the authority of the United States, or this State, execute the office of Governor or Lieutenant Governor, except as hereinafter expressly provided.

Sec. 15. The official term of the Governor and Lieutenant Governor shall commence on the _____ of _____ and on the same day every _____ year thereafter.

Sec. 16. He shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses except treason and cases of impeachment, subject to such regulations as may be provided by law. Upon conviction for treason, he shall have power to suspend the execution of the sentence until the case shall be

reported to the General Assembly at its next meeting, when the General Assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law; and shall report to the General Assembly at its next meeting each case of reprieve, commutation or pardon granted; and also all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted.

Sec. 17. In case of the death, impeachment, resignation, removal from office, or other disability of the Governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the Lieutenant Governor.

Sec. 18. The Lieutenant Governor shall be President of the Senate, but shall only vote when the Senate is equally divided: and in case of his absence, or impeachment, or when he shall exercise the office of Governor, the Senate shall choose a President *pro tempore*.

Sec. 19. If the Lieutenant Governor, while acting as Governor, shall be impeached, displaced, resign, or die, or otherwise become incapable of performing the duties of the office, the President *pro tempore* of the Senate shall act as Governor until the vacancy is filled, or the disability removed; and if the President of the Senate, for any of the above causes, shall be rendered incapable of performing the duties pertaining to the office of Governor, the same shall devolve upon the Speaker of the House of Representatives.

Sec. 20. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called the Great Seal of the State of Iowa.

Sec. 21. All grants and commissions shall be in the name and by the authority of the people of the State of Iowa, sealed with the Great Seal of this State, signed by the Governor, and countersigned by the Secretary of State.

Sec. 22. A Secretary of State, Auditor of Public Accounts, Treasurer of State, Superintendent of Public Instruction, and Attorney General shall be elected by the qualified electors, who shall continue in office two years. The Secretary of State shall keep a

fair register of all the official acts of the Governor, and shall, when required, lay the same, together with all papers, minutes, and vouchers relative thereto, before either branch of the General Assembly, and shall perform such other duties as shall be assigned him by law.

Sec. 23. Every bill which shall have passed the General Assembly shall be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it with his objections, to the House in which it shall have originated, which House shall enter the objections at large upon its Journals, and proceed to reconsider the bill. If, after such consideration, a majority of all the members elected to that House shall agree to pass the bill, it shall be sent, with the Governor's objections, to the other House, by which it shall likewise be reconsidered; and if it shall be approved by a majority of all the members elected to that House, it shall be a law. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, it shall be a law without his signature, unless the general adjournment shall prevent its return, in which case it shall be a law, unless the Governor, within ten days next after such adjournment, shall file such bill, with his objections thereto, in the office of the Secretary of State, who shall lay the same before the General Assembly at its next session, in like manner as if it had been returned by the Governor. But no bill shall be presented to the Governor within two days next previous to the final adjournment of the General Assembly.³³

The reading of this report was dispensed with and one hundred copies were ordered to be printed for the use of the Convention. Of the twenty-three sections in the report, sections 3, 5, 15, and 18 were additions to the Article on the Executive Department, and all pertained to the office of the Lieutenant Governor, which had been regarded by the Convention of 1846 as useless and therefore uneconomical. Section twenty-three pertaining to the executive sanction of legislative bills was largely borrowed from section sixteen of the Article on the Legislative Department in the

³³ *Journal of the Constitutional Convention of the State of Iowa, 1857*, pp. 70-73.

Constitution of 1846, and therefore while it was a new addition to the Article on the Executive Department, it was not a new addition to the Constitution. To avoid duplication this section was later dropped by the Convention from the article on the Executive Department since it was adopted as an essential part of the Article on the Legislative Department.

When the report of the standing committee was taken up for consideration there was some difference of opinion as to whether the term of Governor should be two or four years. This part of section two was left blank to be inserted by the Convention. George Gillaspie objected to a four year term because he was satisfied that the people were almost universally opposed to a term as long as this. He declared: "If we have a good governor who keeps up with the age, there is no trouble about re-electing him, and he will serve four years; but if he is not up to the age, as a matter of course, the quicker we get rid of him the better. I hope that the convention will not deprive the people of the State of the privilege at the regular State election, of voting for all the officers of the State. We elect members of Congress every two years; we elect our auditor, our Secretary of State, and our Treasurer, every two years; and I can see no good reason why we should not elect our Governor at the same time."

David Palmer was of much the same opinion and highly favored rotation in office. He believed that the shorter the term of office the better it would be for the public welfare.

Daniel H. Solomon believed that if the Governor had certain policies that he wished to put in execution and his views accorded with those of the people, he would have no difficulty in securing reelection at the expiration of his term of office. On the contrary if the Governor's views did not accord with those of the electorate, they should have the

opportunity of electing a new executive. By a vote of twenty-three in favor to nine against the Convention finally decided for a two year term of office for the chief magistrate of the Commonwealth.³⁴

The next discussion centered around sections three and four, which provided for the office of a Lieutenant Governor and the manner of his election. In Committee of the Whole it was agreed to strike out these sections and to substitute for them the provision of the old Constitution, thus eliminating the office of Lieutenant Governor. Hosea W. Gray was the first member to take the floor in the Convention in opposition to the action of the Committee of the Whole in regard to the office of Lieutenant Governor. He declared that Mr. Todhunter, chairman of the standing committee, had drafted the entire report and since that gentleman was detained by illness, he himself wished to say something in behalf of the office of Lieutenant Governor. He referred to ten free and four slave States whose Constitutions contained provisions for this office. Speaking in favor of the office he argued that it would at least provide organization of one house of the legislature and thus prevent delay arising from inability to elect a presiding officer. Furthermore, it would enable every Senator to represent his own district upon the floor of the house.

Wm. Penn Clarke favored the amendment made by the Committee of the Whole. His argument was that the office of Lieutenant Governor created a place for a partisan; that the Senate was the most competent body to select its own presiding officer and that the provision for a Lieutenant Governor would not prevent delay in the organization of the legislature because there was nothing to keep the House from deadlocking over the selection of its presiding officer.

³⁴ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 579, 590, 591, 596, 597.

Mr. Clarke apparently entertained a general distrust for Lieutenant Governors, for, said he, if "we look at the history of any State where they have had this officer, we shall find that in any emergency he has acted in the face and eyes of the will of the people, and done things improper, illegal, and dishonorable, to subserve the purposes of the party to which he belongs."

James F. Wilson opposed the argument of Mr. Clarke. In his opinion this argument against the office of Lieutenant Governor was also an argument against Senators. All offices were partisan. If the office of Lieutenant Governor should be rejected, and succession to the office of Governor should be placed upon the President of the Senate, this would in case of vacancy of the former make the latter Governor, and thus give to the people of one county the power of selecting the chief magistrate of the State. If, on the other hand, succession should be changed so as to place the Secretary of State in this office in case of vacancy, then the whole executive office would be deranged for the Secretary of State could not well fill both offices. Mr. Wilson declared that upon reflection, he believed the advantages of the office of Lieutenant Governor were far superior to the disadvantages.

John T. Clark, too, said that he favored the office of Lieutenant Governor because he believed that an executive officer who performed the duties of the office of Governor or Lieutenant Governor should be elected by the people.

Following further remarks by a number of delegates the question of striking out the office of Lieutenant Governor was finally put, and decided in the negative by a vote of fourteen for and nineteen against. Now that the office of Lieutenant Governor was retained it was decided that his term of office should correspond with that of the Governor and so the blank in section three was filled with the word

“two”. Since no further amendments were proposed to the sections under consideration, section four remained unchanged.³⁵

The question of placing an age qualification upon the office of Governor was also the subject of some debate. Section six of the standing committee’s report provided that in order to qualify for this office, the candidate must be at least thirty years of age. Alpheus Scott strongly supported an amendment to permit any qualified elector to hold the office. He believed that the people should be free to choose from among their own number anyone whom they chose to represent them, regardless of age. In his estimation anyone who had reached his majority might be as capable in thought and ability as if he had reached an older age. An amendment to the first amendment was then proposed which would strike from this section the entire provision in regard to age qualifications. This amendment was accepted by the proposer of the first amendment and the discussion was continued.

Rufus L. B. Clarke, in speaking of the question of permitting the people to select whomsoever they wished to represent them, said:

This is the principle that men will come to yet, when this Old Fogyism, this relic of old Federalism, this hedging and guarding the people at every point, this fear to trust the people, will all be swept away like a cobweb, and the people will be allowed to select their representatives wherever they can find them from their midst, without being trammelled by all these qualifications. I am not afraid to trust the people to the fullest extent. I have confidence that they will understand their own interests, if you will only act broadly upon that principle, and not be forever jealous of them. People are just beginning to see where this is leading them. They are beginning to creep along now towards their full liberty, are beginning to embrace republicanism in all of its purity,

³⁵ *The Debates of the Constitutional Convention of the State of Iowa*, 1857, Vol. I, pp. 579, 580, 591–595, 597, Vol. II, p. 1017.

in its full length and breadth and height, and this it is which leads them to the opinion that when we throw the doors open and leave these things free and unrestrained to the people, they will right themselves, that they do not require this eternal guarding and hedging. I am, therefore, in favor of striking out, and inserting, if it is desired, twenty-one years of age.

John Edwards proposed to amend the section by adding, "provided that bachelors shall not be eligible to the office of Governor." John T. Clark opposed such a proposal, declaring that in "the first place it is perfectly useless; for a person who has been a candidate for a certain office, without an election, long enough to be called an old bachelor, certainly need not be feared as a competitor by any candidate for the office of Governor of State. Consequently, it would be wholly unnecessary to incorporate into the Constitution a provision of this kind. In the next place, I am inclined to look upon that class of persons with a great deal of indulgence, and I certainly would be the last one to place anything in the Constitution of the State proscribing them, or in any way making them in any more unfortunate position than nature seems to have assigned them."

In regard to placing the age qualification at thirty years Mr. Clark said he favored turning the tables around and making anyone beyond the age of thirty ineligible for the office. Further argument ensued but it was finally decided by a small margin of three votes to retain the age qualification for Governor at thirty years.³⁶

The report of the Committee on the Executive Department in section eleven qualified the provision embodied in section nine of the old Constitution, granting to the Governor power to convene the General Assembly in extra session, by adding thereto the following: "and when so convened, they shall have no power to legislate upon any

³⁶ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 580-583, 597, Vol. II, p. 1017.*

subject save that suggested in the message of the Governor." When this question came before the Convention, Harvey J. Skiff proposed to strike out the portion of the section added by the standing committee. He feared that other matters might come up which it would be advisable for the legislature to take action upon and the legislature should not be restricted in this regard by the will of the Governor. Otherwise, he said, the Governor might just as well be given power to legislate in the absence or vacation of the General Assembly.

Mr. Solomon took issue with this opinion. He believed that the question should be considered in connection with annual or biennial sessions of the legislature. By this provision the Governor was clothed with authority to convene the General Assembly in extra session, but was required in his proclamation to state the objects and purposes for which the legislature was to be convened. The members of the legislature were elected upon certain issues, and when in session they perform their duty to their constituents in regard to the issues upon which they were elected. The section under consideration, however, provided for unexpected occasions when immediate action might be necessary or advantageous, and which in the opinion of the chief magistrate required an extra session of the legislature. "I think", said Mr. Solomon, that "the people would be relieved from a great deal of unnecessary and improper legislation if, the matters upon which the Legislature are called together having been attended to, that object having been secured, and the Legislature having done all that they were elected to do, there should be no power to act upon other subjects." He further contended that if the provision in question were stricken from this section it would enable the Governor to be indefinite and reckless in regard to the objects and purposes set forth for convening the legislature

in special session. He might set forth one object and have them consider subjects entirely irrelevant to the question upon which they were convened. Mr. Solomon wished to hold the Governor responsible for his acts, for if he was to have the high prerogative of calling the legislature into special session, he should also set forth in clear cut and concise statements his reasons for so doing. On the other hand, however, if the people desired general legislation every year, then provision should be made for annual sessions of the legislature. If, when called into extra session, the legislature should have plenary power to do anything that any legislature *de novo* might do, then the members should come from the people directly.

Rufus L. B. Clarke favored striking out the provision in question because an extra session of the legislature was always an expense to the State and therefore when convened in extra session the legislature should have power to consider any measures of importance even though they might not have been thought of by the Governor. Moreover he believed that to tie the legislature down to the subjects set forth in the Governor's proclamation was putting too much power in the hands of the Governor. It would be holding the legislature as a creature of the Governor to allow him to tell them upon what subjects they should legislate and when this was done to tell them to go home. "I say", said he, "that if the representatives of the people come up here, they should come here with all the majesty of the people." He did not object to the Governor's having power to convene the General Assembly in an emergency, but when the members were assembled he did not wish to have them bound by the will of the chief executive.

Further argument similar to that presented was offered on both sides of the question, but when the final determination came the Convention decided in favor of the amend-

ment — that is, to leave the provision as it stood in the old Constitution, and not to give the Governor power to hold the legislature for action only upon those specific objects set forth in the proclamation convening the General Assembly in special session. That the latter view is also entertained and upheld by the courts of Iowa is substantiated by the decision in the case of *Morford v. Unger* in which the court held:

Where the business of the general assembly, at a special session convened by the governor, is not restricted by some constitutional provision, it may enact any law at such special session, that it might at a regular session. The powers of the general assembly not being derived from the governor's proclamation, it is not confined to the special purposes for which it may have been convened by him.³⁷

Section thirteen of the report on the executive department which gives the Governor power to adjourn the General Assembly in case of disagreement between the two houses in respect to the time of adjournment was amended by the Committee on Revision but no material change was made.³⁸

The next provision to arouse discussion in the Convention was section fifteen which provided for the commencement of the official terms of the Governor and Lieutenant Governor. No time having been specified in the standing committee's report, it was agreed after some debate to set the date for commencement on the second Monday in January following their election, and to continue for two years, and until their successors to office were elected and qualified. A further provision was added to this section specifying that when the Lieutenant Governor should act as Governor, he

³⁷ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 583-585, 596, Vol. II, p. 1018; *Morford v. Unger*, 8 Iowa 82.

³⁸ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. II, p. 1018.

should receive the same salary as the Governor, whereas while serving as presiding officer of the Senate he should receive as compensation only the same mileage and double the compensation of a Senator.³⁹

Section sixteen relative to the pardoning power of the Governor was so amended as to require the Governor to state reasons for all reprieves, commutations, or pardons granted by him. This amendment was moved by Wm. Penn Clarke, who acted upon the suggestion of Governor James W. Grimes. The latter in conversation with Mr. Clarke said that such a provision should be added to the Constitution in order to prevent improper pardons, for the legislature had thus far made no such provision as the one suggested. No objection was offered to Mr. Clarke's proposed change and it was accordingly approved by the Convention.⁴⁰

In regard to the power of the Governor under this provision the courts have held that his power "to remit forfeitures does not extend to the costs made in procuring judgment upon a forfeiture", therefore it does not apply to costs taxed in favor of officers and witnesses.

In its broadest sense the term pardon "contemplates a remission of guilt whether before or after conviction". The constitutional provision, however, limits the power of the Governor in this respect to cases where conviction has been had. Furthermore, the power of the Governor to grant pardons does not go so far as to bar or to suspend the actual operations of the laws.⁴¹ The creation of a Board of Parole by statute in no way abrogates the constitutional power of

³⁹ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 586, 596, 597, 598, Vol. II, p. 1018.

⁴⁰ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 586, 587, 596.

⁴¹ *State v. Beebee*, 87 Iowa 636; *State ex rel. v. Forkner*, 62 N. W. 772; *Code of 1897* (Annotated), pp. 92, 93.

the Governor to grant pardons or reprieves and to commute sentences.⁴²

Section twenty-two of the report provided for the following executive officers: Secretary of State, Auditor of Public Accounts, Treasurer of State, Superintendent of Public Instruction, and Attorney General. It likewise prescribed the duties of the Secretary of State. When this section came before the Convention for consideration Mr. Gillaspy moved to strike out that portion relative to the Superintendent of Public Instruction and the Attorney General. His reason for so doing was that in his opinion there was no need whatever for the office of Superintendent of Public Instruction. The best policy would be to create as few offices as possible to eat up the school fund of the State. Moreover, Mr. Gillaspy declared, the duties assigned to this officer were of such a character that no living person could perform them. In regard to the office of Attorney General Mr. Gillaspy considered "it a perfect sinecure, and an office of no benefit to the State".

Upon recommendation of members of the Committee on Education and School Lands, the provision for the office of Superintendent of Public Instruction was stricken out, because this committee proposed to substitute for this office the Board of Education provided for under the Article on Education and School Lands. The office of Attorney General was also stricken from this section because it was provided for under the Article on the Judicial Department.

Finally it was also agreed that the provision specifying the duties of the Secretary of State should also be removed from section twenty-two. As adopted by the Convention this section read:

A Secretary of State, Auditor of Public Accounts, and Treasurer of State shall be elected by the qualified electors, who shall con-

⁴² *Ware v. Sanders*, 146 Iowa 233.

tinue in office two years, and perform such duties as may be required by law.⁴³

The last section of the report of the Committee on the Executive Department was number twenty-three. This section provided for the executive approval of all bills passed by both houses of the General Assembly before they could become laws. This provision created no discussion at this time, having been fully discussed as a part of the Article on the Legislative Department. The majority of delegates were favorable to the granting of this power to the Governor, but there was some difference of opinion as to whether a two-thirds majority vote should be required to pass legislative measures over the Governor's veto. This requirement was, however, retained. Since all that was to be accomplished by this section had already been provided for under section sixteen of the Article on the Legislative Department this section was stricken from the Article on the Executive Department.⁴⁴ The article was then passed without further change. It read:

EXECUTIVE DEPARTMENT

Section 1. The supreme executive power of this State shall be vested in a Chief Magistrate, who shall be styled the Governor of the State of Iowa.

Sec. 2. The Governor shall be elected by the qualified electors at the time and place of voting for members of the General Assembly, and shall hold his office two years, from the time of his installation, and until his successor is elected and qualified.

Sec. 3. There shall be a Lieutenant Governor, who shall hold his office two years, and be elected at the same time as the Governor. In voting for Governor and Lieutenant Governor, the electors shall designate for whom they vote as Governor, and for whom as Lieutenant Governor. The returns of every election for Gov-

⁴³ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 588, 589, Vol. II, p. 1018.*

⁴⁴ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 525-527, 567, 589, 596.*

ernor, and Lieutenant Governor, shall be sealed up and transmitted to the seat of government of the State, directed to the Speaker of the House of Representatives, who shall open and publish them in the presence of both Houses of the General Assembly.

Sec. 4. The persons respectively having the highest number of votes for Governor, and Lieutenant Governor, shall be declared duly elected; but in case two or more persons shall have an equal, and the highest number of votes for either office, the General Assembly shall, by joint vote, forthwith proceed to elect one of said persons Governor, or Lieutenant Governor, as the case may be.

Sec. 5. Contested elections for Governor, or Lieutenant Governor, shall be determined by the General Assembly in such manner as may be prescribed by law.

Sec. 6. No person shall be eligible to the office of Governor, or Lieutenant Governor, who shall not have been a citizen of the United States, and a resident of the State two years next preceding the election, and attained the age of thirty years at the time of said election.

Sec. 7. The Governor shall be commander-in-chief of the militia, the army, and navy of this State.

Sec. 8. He shall transact all executive business with the officers of government, civil and military, and may require information in writing from the officers of the Executive Department upon any subject relating to the duties of their respective offices.

Sec. 9. He shall take care that the laws are faithfully executed.

Sec. 10. When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the Governor shall have power to fill such vacancy, by granting a commission, which shall expire at the end of the next session of the General Assembly, or at the next election by the people.

Sec. 11. He may, on extraordinary occasions, convene the General Assembly by proclamation, and shall state to both houses, when assembled, the purpose for which they shall have been convened.

Sec. 12. He shall communicate, by message, to the General Assembly, at every regular session, the condition of the State, and recommend such matters as he shall deem expedient.

Sec. 13. In case of disagreement between the two Houses with respect to the time of adjournment, the Governor shall have power

to adjourn the General Assembly to such time as he may think proper; but no such adjournment shall be beyond the time fixed for the regular meeting of the next General Assembly.

Sec. 14. No person shall, while holding any office under the authority of the United States, or this State, execute the office of Governor, or Lieutenant Governor, except as hereinafter expressly provided.

Sec. 15. The official term of the Governor, and Lieutenant Governor, shall commence on the second Monday of January next after their election, and continue for two years, and until their successors are elected and qualified. The Lieutenant Governor, while acting as Governor, shall receive the same pay as provided for Governor; and while presiding in the Senate, shall receive as compensation therefor, the same mileage and double the per-diem pay provided for a Senator, and none other.

Sec. 16. The Governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offences except treason and cases of impeachment, subject to such regulations as may be provided by law. Upon conviction for treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the General Assembly at its next meeting, when the General Assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law; and shall report to the General Assembly at its next meeting, each case of reprieve, commutation, or pardon granted, and the reasons therefor; and also all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted.

Sec. 17. In case of the death, impeachment, resignation, removal from office, or other disability of the Governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the Lieutenant Governor.

Sec. 18. The Lieutenant Governor shall be President of the Senate, but shall only vote when the Senate is equally divided; and in case of his absence, or impeachment, or when he shall exercise the office of Governor, the Senate shall choose a President pro tempore.

Sec. 19. If the Lieutenant Governor, while acting as Governor, shall be impeached, displaced, resign, or die, or otherwise become incapable of performing the duties of the office, the President pro tempore of the Senate shall act as Governor until the vacancy is filled, or the disability removed; and if the President of the Senate, for any of the above causes, shall be rendered incapable of performing the duties pertaining to the office of Governor, the same shall devolve upon the Speaker of the House of Representatives.

Sec. 20. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called the Great Seal of the State of Iowa.

Sec. 21. All grants and commissions shall be in the name and by the authority of the people of the State of Iowa, sealed with the Great Seal of the State, signed by the Governor, and countersigned by the Secretary of State.

Sec. 22. A Secretary of State, Auditor of State, and Treasurer of State, shall be elected by the qualified electors, who shall continue in office two years, and until their successors are elected and qualified; and perform such duties as may be required by law.⁴⁵

The Constitution drawn up by the Convention of 1857 was submitted to the electorate for approval on Monday, August 3, 1857, at which time it was ratified by the small majority of 1460 votes.⁴⁶ Since the adoption of the Constitution no change has been made in the Article on the Executive Department.⁴⁷

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⁴⁵ *Journal of the Constitutional Convention of the State of Iowa, 1857* (Appendix), pp. 12-14.

⁴⁶ Erbe's *Constitutional Provisions for the Suffrage in Iowa* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XXII, p. 206.

⁴⁷ There are a few other provisions of the Constitution directly related to the Executive Department of the government which are no longer effective. The Article on Education provides that the Lieutenant Governor shall be presiding officer of the Board of Education, and that the Governor shall be ex officio a member of that board. Since the Board of Education has been abolished by statute, these provisions no longer affect this department of government.

THE JUDICIAL DEPARTMENT OF GOVERNMENT AS PROVIDED BY THE CONSTITUTION OF IOWA

Most State Constitutions provide that the powers of government shall be divided into three separate and distinct branches, namely, the legislative, the executive, and the judicial, and that the persons exercising the powers of the one shall not exercise any of the powers belonging to either of the others unless this is expressly provided for in the Constitution. The judicial, the last of these branches, has to do with the interpretation of the law. The creation of a department of government which is neither concerned with the making nor the enforcement of the law has been regarded as an essential safeguard to both the personal and property rights of the citizen.

Although most Constitutions provide that the three branches of government shall be separate and distinct, and that no one branch shall exercise the powers of the others, they are, however, to a more or less degree dependent upon one another. The judicial department is ultimately dependent upon the executive department for the enforcement of its decisions. Likewise it must depend upon the legislative department to raise the funds necessary for its maintenance and to enable it to discharge the functions for which it was created.

The functions of the judicial department of the government are discharged through a system of courts. In the United States, each State has its own judicial system framed according to its own local needs. Ordinarily this would tend to create a wide diversity in the organization

and operation of the judiciary in the various States, but owing to the fact that the judicial systems of these States have the Common Law as their basis, there is a close similarity among them. In general the courts in the different States are arranged by rank or grade according to the importance of the cases to be handled by each; cases of the highest importance being delegated to the courts of highest rank. In Iowa, as will be seen, the judicial system is very similar to those systems which have been established in the other States.

THE JUDICIARY OF IOWA AS PROVIDED IN THE
ORGANIC ACT OF 1838

The Organic Act of June 12, 1838, under which Iowa was established as an independent Territory, vested the judicial power of the Territorial government in a Supreme Court, district courts, probate courts, and justice of the peace courts. By and with the advice and consent of the Council the Governor of the Territory was empowered to appoint all judicial officers (except justices of the Supreme Court, attorney, and marshal), justices of the peace, sheriffs, and militia officers. All vacancies occurring in these offices during the recess of the Council were to be filled by the Governor, and all persons appointed to fill such vacancies continued in office until the next session of the Legislative Assembly. Under the provisions of the Organic Act both the appellate and original jurisdiction of the courts was to be defined by legislative enactment. The Supreme Court and district courts were given a chancery (equity) as well as a Common Law jurisdiction. Justice of the peace courts were denied original jurisdiction in all controversies where titles or boundaries were in dispute, or in which the amount in question exceeded the sum of fifty dollars.¹

The Organic Act also provided for the appointment of an

¹ *Laws of the Territory of Iowa, 1838-1839*, pp. 34-36.

Attorney and a Marshal by the President of the United States with the consent of the United States Senate. The term of office for these officials was four years unless sooner removed by the President. These officials appointed for the Territory of Iowa were to perform the same duties, be subject to the same restrictions and penalties, and to receive fees on the same basis as were then received by corresponding officials of the Territory of Wisconsin. It was further provided that all justices of the peace, sheriffs, constables, and other judicial officers who were in office in the Territory of Wisconsin west of the Mississippi River at the time the new Territorial government went into operation, were to continue in office until they were reappointed or others selected to take their places. No such officer, however, was to continue in office longer than twelve months without reappointment to office. The Governor of Iowa Territory was given power to define temporarily the judicial districts of the Territory and to assign the judges who were appointed to the several districts, as well as to set the time for holding court in the various counties in each judicial district. After temporary organization was effected the power to reorganize, alter, or modify judicial districts; to assign judges, and to change the time for holding courts was vested in the Legislative Assembly. Such action could be taken at its first session or at any subsequent session. Under the Territorial government all judicial officers were required to take an oath of office to support the Constitution of the United States and to discharge faithfully the duties of their respective offices.²

The District Court.—The Organic Act of June 12, 1838, divided the Territory of Iowa into three judicial districts, and provided that a district court should be held in each.

² *Laws of the Territory of Iowa, 1838-1839*, pp. 36, 37, 38, 39, 40.

The number of districts corresponded with the number of judges of the Supreme Court, and each judge was to preside over the district court to be held in the district to which he was assigned. The judge assigned to one of these three districts, the Organic Act prescribed, must reside in the district to which he was appointed. Each district court was authorized to appoint a clerk who was to keep his office at the place where the court held its sessions. The clerks of the district court were also to be the registers in chancery. In case of vacancy in the office of clerk during the vacation of the court the judge of the district court was authorized to fill such vacancy, and the appointment so made was to continue until the next term of the court. The district courts of the Territory of Iowa were to have and to exercise the same jurisdiction as the circuit and district courts of the United States in all cases arising under the Constitution and laws of the Federal government. The first six days of the district court or as much of that time as was necessary was set aside for the trial of cases arising under the Constitution and laws of the United States. Writs of error and appeals from the decisions of the district court in these cases had to be made to the Supreme Court of the Territory.³

All suits, process, and proceedings, and all indictments and informations filed with the district courts of Wisconsin Territory west of the Mississippi River and still undetermined at the time that the new Territory was organized, were transferred to the district courts of Iowa Territory to be tried, prosecuted, and determined. In all cases where the demand was made the Organic Act provided that writs of error, bills of exception, and appeals in chancery were to be allowed from the decisions of the district courts to the Supreme Court of the Territory in the manner to be pre-

³ *Laws of the Territory of Iowa, 1838-1839*, pp. 35, 36, 37, 38, 39, 40.

scribed by law, but in no case was trial by jury to be allowed in the Supreme Court.⁴

The Supreme Court.—The Organic Act of Iowa also provided for a Supreme Court to consist of three judges — one chief justice and two associate judges. These judges were appointed for a term of four years by the President with the consent of the Senate. Each judge before entering upon his duties had to take an oath of office to support the Constitution of the United States and to discharge faithfully the duties of his office. Any two of the judges constituted a quorum for the transaction of the business of the court. One term of the court was required to be held annually at the seat of government.⁵

The annual salary of the chief justice of the Supreme Court and of the associate judges was fifteen hundred dollars to be paid quarterly out of the treasury of the United States. The court was authorized to appoint its own clerk who was to hold office at the pleasure of the court. All cases from the counties of the Territory of Wisconsin lying west of the Mississippi River which were brought before the Supreme Court of that Territory and remained undetermined on July 3, 1838, were removed to the Supreme Court of the Territory of Iowa, and there determined upon in the same manner as they would have been proceeded upon in the former court. Writs of error and appeals from the final decisions of the Territorial Supreme Court in cases where the amount in controversy exceeded one thousand dollars could be carried to the Supreme Court of the United States in the same manner as prescribed for appeals from the Circuit Court of the United States.⁶

⁴ *Laws of the Territory of Iowa, 1838-1839*, pp. 34-36, 38.

⁵ *Laws of the Territory of Iowa, 1838-1839*, pp. 34-36.

⁶ *Laws of the Territory of Iowa, 1838-1839*, pp. 34-36, 38, 39.

The judicial system as thus prescribed for the Territory of Iowa was very similar to those which had been set up for Territories organized prior to this time. They were the creation of Congress and were arranged in a graded series, consisting of the Supreme Court, the highest in rank, the district courts, the probate courts, and the justice of the peace courts.

THE JUDICIARY OF IOWA AS PROVIDED BY THE
CONSTITUTION OF 1844

Soon after the formation of Iowa as a separate Territory agitation was started for State organization. It was not, however, until April, 1844, that the people of the Territory voted in favor of a Constitutional Convention for the purpose of drawing up a Constitution preparatory to admission to the Union. Under the Act of February 12, 1844, and the amendment thereto of June 19, 1844, seventy-three delegates were elected to a Constitutional Convention to assemble at Iowa City, the seat of the government, on October 7, 1844.⁷ Most of the delegates assembled at the Capitol building on the date set. The Convention was called to order at two o'clock in the afternoon and temporary organization effected. On the following day permanent organization took place and the work of the Convention was soon under way. One of its important problems was to provide a satisfactory judicial system for the proposed Commonwealth.⁸

Prominent among the standing committees provided for in the rules adopted by the Convention was that on the judiciary department. As members of this committee President Shepherd Leffler appointed Jonathan C. Hall,

⁷ Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 133-149.

⁸ Shambaugh's *Fragments of the Debates of the Constitutional Conventions of 1844 and 1846*, pp. 7, 8.

James Grant, James Clarke, Stephen Hempstead, Stephen B. Shelledy, Jonathan E. Fletcher, and Andrew W. Campbell.⁹ On the day following the appointment of this committee a resolution was referred to them for consideration, which read as follows:

Resolved, That there be established in each organized county in the state, a county court, to be composed of the justices of the peace of the several townships, to whom shall be assigned by law, the county and probate business, for the purposes aforesaid, meeting at stated periods without any additional compensation.

That all roads laid out under a special act of the Legislature, shall be at the expense of the state.

The committee in reporting upon this resolution expressed the opinion that it should more properly be referred to the Committee on County Organization and they were relieved from further consideration of it.¹⁰ Later, a resolution was introduced but not referred, which asked that the "Judicial committee be instructed to inquire into the expediency of inserting an article in the Constitution authorizing the Legislature, so to provide, that all crimes of a less degree than felony shall be triable upon information of the District Attorney, of the proper county, without the intervention of a Grand Jury."¹¹ As this resolution was not referred, it was not necessary for the Judicial Committee to give it consideration.

On Saturday morning, October 12th, or three days following the appointment of the Committee on the Judiciary,¹² it was ready with its report on this important phase of the

⁹ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, p. 14.

¹⁰ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 17, 30.

¹¹ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, p. 33.

¹² *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 14, 35.

Constitution. The report as presented consisted of eighteen sections and read as follows :

ON THE JUDICIARY

1. The Judicial power of this State both as to matter of law and Equity, shall be vested in a Supreme and District Courts, and such other inferior courts as the Legislature may from time to time establish.

2. The Supreme Court shall consist of a Chief Justice and three Associate Justices, any two of whom shall be a quorum to hold court, except as hereinafter provided. The Supreme Court shall have appellate jurisdiction in all cases in Chancery and constitute a Supreme Court, for the correction of errors in all cases at law, under such restrictions as the Legislature may from time to time prescribe.

3. The Supreme Court shall have power to issue all writs and process that may be necessary to do justice to parties having the rights of citizens, and exercise a complete supervisory power over all inferior Judicial tribunals.

4. The Supreme Court shall hold at least one term of said court in each year, at the seat of government, at such time as may be fixed by law. *Provided*, The Legislature may provide for two terms in each year.

5. The Judges of the Supreme Court shall be conservators of the peace throughout the State.

6. The District Court shall consist of a President Judge, who shall reside in the district that shall be assigned to him by law, the District Court shall have common law and chancery jurisdiction in all civil and criminal matters arising in the respective counties in their district, as shall be prescribed by law. The Judges shall be conservators of the peace in their respective districts — shall have power to issue writs of injunction, ne exeat reipublico, habeas corpus, mandamus, procedendo and certiorari, and such other common law writs as may be necessary to do justice to parties.

7. The Judges of the Supreme Court and District Courts, shall be elected by the joint vote of the Senate and House of Representatives, and hold their office for the term of six years. Which vote shall be viva voce, and entered on the Journal of the House of Representatives: *Provided*, That the Legislature may, at their dis-

cretion, pass a law authorizing the election of district judges, by the people of the district within which said judges are to preside.

8. There shall be elected in each county of this State, one Probate Judge, who shall have jurisdiction over Wills and Administration, shall hold his office for the term of four years, and until his successor shall be elected and qualified.

9. The Judge of Probate in the absence of the Judge of the District Court, may allow writs of injunction, ne exeat republico, habeas corpus, and do such other acts as may be prescribed by law.

10. There shall be elected in each county one Clerk of the District Court, who shall hold his office for the term of four years and until his successor is elected and qualified.

11. There shall be a Prosecuting Attorney elected by the people for each county, who shall hold his office for four years.

12. The State shall be divided into four Judicial Districts, and the Judges of the Supreme Court shall be assigned by law to respective districts, and shall perform the duties of district judges in such district for the term of six years from the time of the first election of judges under this constitution, after which the Legislature may at their discretion, elect district judges for such district: *Provided*, That the Legislature shall have power to make such other and additional districts as they may deem necessary, and elect judges of the District Court for such new district. The Judge of the Supreme Court, who tried the cause in the district court, shall not set upon the trial of the same case in the Supreme Court.

13. When any vacancy shall happen in the office of Clerk of the district court, such vacancy shall be filled by a pro tem. appointment of the Judge of said court, the Clerk so appointed shall exercise the duties of the office until a Clerk shall be duly elected and qualified.

14. When any vacancy shall happen in any of the courts by the death, resignation or removal from office of any judge, the Governor shall fill such vacancy by appointing some person to fill said office. The Judge so appointed shall hold the office until a successor shall be duly elected and qualified.

15. The compensation of Judges of the Supreme Court and District Court, shall be one thousand dollars per annum, to be paid quarterly: *Provided*, That the Legislature may levy a tax upon all causes that may be brought into the Supreme or District Courts,

not exceeding two dollars on each case, to be paid by the losing parties or by the plaintiff in the suit, and from said fund increase the salaries of the judges to any sum not exceeding one thousand five hundred dollars.

16. The Judges of the Supreme Court shall appoint a Clerk who shall reside at the seat of government, and hold his office during the pleasure of the Court.

17. The style of all process shall be "The State of Iowa," and all prosecutions shall be carried on in the name and by the authority of the State of Iowa.

18. The Judges of the several courts and clerks shall be removable by impeachment, by the Legislature, or such tribunal as the Legislature may establish, and during the pendency of any impeachment the accused shall be suspended from discharging the duties of the office.¹³

Four days following the presentation of this report a minority report of the Committee on the Judiciary was presented by Jonathan E. Fletcher. The minority report consisted of but thirteen sections and read as follows:

MINORITY REPORT OF THE COMMITTEE ON THE JUDICIARY

1. The Judicial power of this State shall be vested in a Supreme Court and courts of Common Pleas, and in such inferior courts as the Legislature may, from time to time, ordain and establish.

2. The Supreme Court shall consist of a Chief Justice, and two associate justices, any two of whom shall constitute a quorum and shall have jurisdiction, co-extensive with the limits of the State, under such restrictions and regulations as may, from time to time, be prescribed by law.

3. The courts of Common Pleas shall consist of a President Judge, and two associate judges; the President Judge alone, in the absence of the associate judges, or the President Judge and one of the associate judges, in the absence of the other, shall be competent to hold a court, and the two associate judges, in the absence of the President, shall be competent to hold a court, except in capital cases and cases in chancery.

4. The President and associate judges, of the courts of Common

¹³ *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1844, pp. 35-37.*

Pleas, in their respective counties, shall have civil law and chancery jurisdiction, and also criminal jurisdiction in all such cases, and in such manner as may be prescribed by law.

5. The Judges of the Supreme Court shall, by virtue of their offices, be conservators of the peace throughout the State, as also the President Judges in their respective districts, and the associate judges in their respective counties.

6. The Judges of the Supreme Court shall be elected by the qualified voters of the State, and shall hold their office during the term of seven years.

7. The State shall be divided into three convenient judicial districts, and there shall be elected by the qualified electors, one judge in each district, who shall preside over the courts of Common Pleas in the several counties in the district, to hold his office during the term of five years; *Provided*, That nothing in this article shall be construed as to prohibit the legislature from increasing the number of districts hereafter.

8. The Associate Judges, of the courts of Common Pleas shall be elected by the qualified electors of the respective counties, and shall hold their office for the term of two years.

9. There shall be elected in each county, by the qualified electors therein, a clerk of the court of Common Pleas, to hold his office for the term of five years.

10. The Judges of the Supreme Court shall appoint a clerk, who shall hold his office during their pleasure.

11. The Judges of the Supreme Court shall receive, as a compensation for their services, the sum of _____ dollars per annum. The President Judges of the Court of Common Pleas shall receive the sum of _____ dollars per annum, and the associate judges of the Courts of Common Pleas, shall receive the sum of _____ dollars per day, while engaged in the duties of their respective offices.

12. There shall be no election of the Judges of the Supreme Court until after the first session of the Legislature of this State, and until the Legislature shall otherwise prescribe by law, the powers of the Supreme Court shall be vested in, and its duties shall be performed by the President Judges of the several judicial districts, and they, or the majority of them, shall hold such sessions of the Supreme Court as may be prescribed by law.

13. The style of all process shall be "the State of Iowa." All prosecutions shall be carried on in the name and by the authority of "the people of the State of Iowa," and conclude "against the peace and dignity of the same."¹⁴

The chief points of difference between the two reports was that the first provided for a Chief Justice and three associate justices of the Supreme Court, whereas the minority report provided for a Chief Justice and two associate justices. Under the provisions of the former the Supreme Court judges were to be elected by a joint vote of the House of Representatives subject, however, to change by legislative action so as to make them elective by popular vote, whereas the latter made all judges elective by the people. The term of office for judges in the different courts did not correspond in the two reports. Moreover, the majority report provided for the division of the State into four judicial districts while the minority report provided for only three. A further difference between the two reports was that the majority report provided for the election of a Prosecuting Attorney, the impeachment of judges, and the filling of vacancies by the Governor while the minority report made no such provisions whatever.

Before any action was taken upon either of the reports James Grant, member of the Committee on the Judiciary, offered the following resolutions:

1. *Resolved*, That the Judiciary Department of the Government, shall consist of a Supreme Court, District Courts, and such inferior courts as the Legislature shall, from time to time, establish.

2. The Supreme Court shall consist of three judges who shall be elected by joint ballot of the legislature, and shall be a court of errors to settle questions of law and equity. Their sessions shall be at the seat of Government; and they shall appoint their own clerk.

3. The District Court shall consist of one judge, who shall be

¹⁴ *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1844*, pp. 65-67.

elected by joint ballot as aforesaid; the jurisdiction of said court shall be limited by law; the clerks of said court shall be elected by the people.

4. The term of office of said judges, of Supreme and District courts shall be for six years.

5. The Judges of the Supreme Court shall not perform the duties of judges of the District Court.¹⁵

Finally when the Convention came to a consideration of the Article on the Judiciary, section one relating to the distribution of the judicial power was adopted in essentially the same form as it appeared in the majority report. A few verbal changes of no importance were made. Section two, relating to the composition of the Supreme Court, was amended so as to reduce the number of associate judges from three to two, and to cause the sessions of the court to be held at the seat of government at such time as the Legislative Assembly should prescribe. It was further provided in this section that the Judges of the Supreme Court should appoint a clerk who would hold office during their pleasure. The section as revised was really a combination of sections two, four, and sixteen of the report of the majority of the Committee. Section three of the Article on the Judiciary which deals with the jurisdiction of the Supreme Court was a combination of sections three and five of the majority report. So far as is shown by the records of the debates these sections of the report created no discussion in the Convention.¹⁶

When sections six and seven of the majority report, which provided for the election of judges and the organization and jurisdiction of the district courts, were taken up,

¹⁵ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 86, 87.

¹⁶ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 35-37, 197, 198; Shambaugh's *Fragments of the Debates of the Constitutional Conventions of 1844 and 1846*, p. 103.

Stephen Hempstead proposed a substitute in which he would make the judges elective by the people. He believed that in a republican or democratic government all power resided in the people who were the real sovereigns. He could not see why, if the people were capable of electing their legislators, they would not be capable of choosing their judges. Besides, election by joint ballot of the legislature was one of the most corrupt methods of selecting public officials ever devised. He then pointed out a number of instances where such elections had been conducive to corruption.

Gideon S. Bailey did not doubt the capacity of the people to elect their own judges, but he feared the influence of politics and he did not think that the people cared for this privilege. Consequently he did not believe in giving them something for which they did not ask.

Richard Quinton believed that the ends of justice would be better served through the election of judges by the people than by the legislature.

Ex-Governor Lucas did not accept the opinion that the people were not capable of electing their judicial officers, but he thought that it was the intention of the Convention to establish an independent Supreme Court; and to accomplish this end he believed it would be better to have the judges elected by a joint ballot of the legislature.

J. S. Kirkpatrick opposed the selection of judges by the legislature because he believed that it was "wrong both in principle and in policy, as it had a tendency to trammel, and change the nature of our elections, and tinge in some degree the most brilliant feature of a representative government." He declared himself against the "mode of voting by proxy." One of the finest features of the government, he said, was the fact that the electorate could select men according to their liking, who were qualified to fill the respective offices.

On the other hand if the representatives and judges were to be bound together in their election, the people might vote for a certain representative "who was unfit to make laws, simply because he pledged himself to vote for a favorite candidate for judge". Mr. Kirkpatrick further believed that the election of judges by the people was the greatest and surest protection against corruption that could be offered. "The people were more immediately interested with this department of government; here we applied to have our wrongs redressed, and our rights defended; here character and life and death were put at stake. We should choose our judges ourselves and bring them often to the ballot box."

Thos. J. McKean favored the election by the legislature of judges of both the Supreme and district courts. The only argument in his estimation in favor of the popular election of judges was that the people were the possessors of sovereign power, and should therefore logically elect all of their officers. But, he pointed out, the fact that the people possessed sovereign power did not necessarily mean that they should exercise this power directly in every instance. To do so "would lead to results, fatal alike to the stability of the government and to the rights and liberties of the individual citizen."

Although the qualified electors were regarded as being the people, in point of fact they were only a portion of the people: under the Territorial government only about one-eighth of the population constituted the electorate. Fully eighty-seven per cent of the people would have nothing to do with the selection of judges, yet they would be as much affected by its decisions as the qualified voters would be. If the judges were to be popularly elected, every resident of the State should have an opportunity to participate in their election. This would not be feasible, of course. This

objection, Mr. McKean explained, could not be raised against the election of members of the General Assembly because the object of this department of government was to ferret out public opinion and to formulate it into law. "Its action is upon general subjects, affecting whole classes of people, while the judiciary decides individual cases, affecting individuals directly. The Legislature, though chosen only by the voters, represents the people who could make themselves heard by petition and remonstrance, or direct by instructions; the business of the Judiciary was to decide between the people and the individual. In order to make the Legislature better acquainted with the interests and wishes of the people, the power of choosing Representatives was delegated to small districts. But judicial decisions should never be influenced by local interests. There was no analogy between the objects or duties of the two departments, and there could be no reason why they should be elected in the same manner."

After continued discussion upon this subject a compromise was finally reached in which it was decided that the judges of the district courts should be elected by the qualified voters of the districts over which they were to preside, and that judges of the Supreme Court should be elected by a joint ballot of the legislature. Owing to the fact that section five of the majority report was combined with section three, sections six and seven now became sections four and five of the Article on the Judiciary.¹⁷

When section eight of the majority report, which provided for the election of a probate judge in each county, was being considered, it was enlarged by being combined with sections ten, eleven, thirteen, and fourteen dealing

¹⁷ Shambaugh's *Fragments of the Debates of the Constitutional Conventions of 1844 and 1846*, pp. 104-122; Shambaugh's *History of the Constitutions of Iowa*, pp. 208-212; *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1844*, pp. 35, 36, 108, 113-118.

respectively with the election of a clerk of the district court, the prosecuting attorney, vacancies in the office of clerk of the district court, and vacancies in the office of judge in the courts. The section as finally agreed upon by the Convention read:

There shall be elected in each county, one Judge of Probate, one Prosecuting Attorney, and one Clerk of the District Court, who shall continue in office for two years, and until their successors are elected and qualified. Vacancies in the office of Clerk shall be filled by appointment by the Judge of the District Court, and such appointments shall continue, until a successor is elected and qualified.

The terms of these officers were by these provisions reduced from four to two years.¹⁸ This section appears as section six of the Article on the Judiciary.

One other provision of the majority report on the judiciary was retained by the Convention in its consideration of this important Article. Section seventeen, which read: "The style of all process shall be 'The State of Iowa', and all prosecutions shall be carried on in the name and by the authority of the State of Iowa", was adopted by the Convention in substantially this form as section seven, the final section of the Article on the Judiciary in the Constitution of 1844.¹⁹ The Convention completed its labors on the last day of October after a session of twenty-five days. The Article on the Judiciary as it appeared in the new Constitution read:

JUDICIAL DEPARTMENT

1. The Judicial power shall be vested in a Supreme Court, District Courts, and such other inferior courts, as the Legislature may from time to time establish.

2. The Supreme Court shall consist of a Chief Justice and two Associates, two of whom shall be a quorum to hold court.

¹⁸ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 36, 37, 114, 115, 198.

¹⁹ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1844, pp. 37, 115, 198.

The Supreme Court shall have appellate jurisdiction only, in all cases in chancery, and constitute a court for the correction of errors at law, under such restrictions as the General Assembly may by law prescribe.

The sessions of the court shall be at the Seat of Government, at such times as may be fixed by law; and the Judges thereof shall appoint a Clerk, who shall hold his office during their pleasure.

3. The Supreme Court shall have power to issue all writs and process necessary to do justice to parties, and exercise a supervisory control over all inferior judicial tribunals. The Judges of the Supreme Court shall be conservators of the peace throughout the State.

4. The District Court shall consist of a Judge, who shall reside in the district assigned him by law, be elected by the qualified voters thereof, and hold his office for the term of four years, until his successor is elected and qualified.

The District Court shall be a court of law and equity, and have jurisdiction in all civil and criminal matters arising in the respective counties in the district, in such manner as shall be prescribed by law. The Judges of the District Court shall be conservators of the peace in their respective districts.

The first session of the General Assembly shall divide the State into three districts, which shall be increased as the exigencies of the State may require.

5. The Judges of the Supreme Court shall be elected by joint vote of the General Assembly, and shall hold their offices for the term of four years, and until their successors are elected and qualified.

6. There shall be elected in each county, one Judge of Probate, one Prosecuting Attorney, and one Clerk of the District Court, who shall continue in office for two years, and until their successors are elected and qualified. Vacancies in the office of Clerk shall be filled by appointment by the Judge of the District Court, and such appointments shall continue, until a successor is elected and qualified.

7. The style of all process shall be "The State of Iowa," and all prosecutions shall be conducted in the name and by the authority of the same.²⁰

²⁰ *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1844*, pp. 197, 198.

As will be seen by an examination of this article, its provisions would have entirely reorganized the judicial system as it existed under the Territorial government. In the Territory the judges of the district court were members of the Supreme Court while under the new Constitution separate judges were provided for each court. This was done to prevent a judge from passing upon a decision which he had rendered in a lower court. The manner of selecting judges was also changed, district judges being made elective by popular vote. This was a question which not only created discussion in the Convention but also in the press.

The Iowa Capitol Reporter in commenting upon the constitutional provisions for a judiciary declared that "the organization of the Courts meets our entire approbation." This paper was in favor of the provision which made district judges elective by the people and concluded by saying: "we are determined to give it [the new Constitution] our decided support, and wish to see its unanimous adoption by the people." In another issue of the same paper the following comments were made:

We publish in this number that part of the Constitution of Iowa which related to the judiciary department.

In relation to making the Supreme court independent of the District court organization, we think that the people will generally approve of this provision. It would seem to be proper in case of writs of error from inferior jurisdiction, that the same judge sitting in a Supreme Court should not have an interest to sustain a decision, made by himself, while sitting in an inferior jurisdiction.

In regard to making the Supreme judges' election by the legislature and the inferior judges by the people, although it is a departure from the ancient practice, it may meet the approbation of the public.

The limitation to a term of office in the judicial department we think a decided improvement upon ancient usages.²¹

²¹ Shambaugh's *Fragments of the Debates of the Constitutional Conventions of 1844 and 1846*, pp. 210, 211, 221.

The *Dubuque Transcript*, on the contrary, objected to the election of judges by the people, regarding this provision as sufficiently obnoxious to warrant the rejection of the entire Constitution. The *Burlington Hawk-Eye* set itself "uncompromisingly against the whole construction of the Judiciary", as well as the provision making judges subject to popular election.²²

Both by the public and by the press many similar criticisms were made of this portion of the new Constitution. Many regarded the office of judge as being too sacred to be mixed with partisan politics. Judges should not be made directly responsible to the electorate for their actions. While there were other objections to the proposed Constitution, it must be conceded that the proposed reorganization of the judicial department contributed toward the defeat of the new instrument of government. Although the Constitution of 1844 was submitted to the people at two different times for their approval, it was rejected each time, and as a consequence never functioned.²³

THE JUDICIAL DEPARTMENT AS PROVIDED BY THE
CONSTITUTION OF 1846

Although the Constitution of 1844 had been twice rejected by the people this fact did not operate as a check to the movement toward State organization. The advocates of statehood were persistent in their efforts and on January 17, 1846, an act passed by the Territorial legislature was approved which provided for the election of thirty-two delegates at the township elections in April. Those so chosen were to assemble at Iowa City on May 4th of that year for the purpose of drafting a new Constitution for the proposed

²² Shambaugh's *Fragments of the Debates of the Constitutional Conventions of 1844 and 1846*, pp. 211, 212, 213.

²³ Swisher's *The Judiciary of the Territory of Iowa* in *THE IOWA JOURNAL OF HISTORY AND POLITICS*, Vol. XX, p. 273; Shambaugh's *Fragments of the Debates of the Constitutional Conventions of 1844 and 1846*, p. 376.

State. The delegates chosen at this election, in accordance with the provisions of the act of January 17, 1846, assembled at the Territorial Capitol on the 4th day of May.²⁴

Permanent organization was soon effected, and to prevent delays the rules of the Convention of 1844 were adopted. Six standing committees were determined upon, among which was the Committee on the Judicial Department. The members appointed to this committee by President Enos Lowe were: Henry P. Haun, David Galland, Erastus Hoskins, Sanford Harned, and Francis K. O'Ferrall.²⁵ Of these members three were Democrats and two were Whigs. This is in keeping with the fact that the majority of delegates to the Convention were Democrats. Only two of the five members were lawyers; one being a physician, another a merchant, and the other a farmer.²⁶ The report of this select group of individuals was prepared promptly, and on the day following their appointment Mr. Haun, chairman of the committee, made the following report to the Convention concerning the Article on the Judiciary:

1st. The Judicial power shall be vested in a Supreme Court, District Courts, and such other inferior courts, as the Legislature may from time to time establish.

²⁴ Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 185-190.

²⁵ Erbe's *Constitutional Provisions for the Suffrage in Iowa* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XXII, p. 177; *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1846, pp. xx, 30.

²⁶ Shambaugh's *Fragments of the Debates of the Constitutional Conventions of 1844 and 1846*, pp. 413-415; *The Iowa State Almanac and Statistical Register* for 1860, p. 19. The latter reference lists Erastus Hoskins as a Democrat whereas the former regards him as a Whig. In the election of a President for the Convention, Mr. Hoskins voted for the Democratic candidate. He is therefore regarded as a Democrat in this monograph. If perchance he was a Whig then the majority of the Committee on the Judiciary were Whigs which is not likely to be true in a Democratic convention.

2nd. The Supreme Court shall consist of a Chief Justice and two Associates, two of whom shall be a quorum to hold court.

3rd. The Judges of the Supreme Court to be elected by the qualified voters of the State, at a general election for State officers, to hold their courts within each Judicial district of the State, at such place as the Judges may choose, to hold their offices for five years, and until their successors are elected and qualified, and each to receive a salary of twelve hundred dollars per year, for the first five years, after which time, the General Assembly to fix their salaries. The Supreme Court shall have appellate jurisdiction only, in all cases in Chancery, and shall constitute a court for the correction of errors at law, under such restrictions as the General Assembly may by law prescribe. The Supreme Court shall have power to issue all writs and process necessary to do justice to parties, and exercise a supervisory control over all inferior judicial tribunals, and the Judges of the Supreme Court shall be conservators of the peace throughout the State.

4th. The District Court shall consist of a Judge who shall be elected by the qualified voters of the district in which he resides, and hold his office for the term of five years, and until his successor is duly elected and qualified. The District court shall be a court of law and equity, and have jurisdiction in all civil and criminal matters arising in their respective districts, in such manner as shall be prescribed by law. The Judges of the District Courts shall be conservators of the peace in their respective districts. The first session of the General Assembly shall divide the State into four districts, which may be increased as the exigencies require.

5th. The qualified voters of each county shall elect one Judge of Probate at a general election, who shall hold his office for the term of three years, and until his successor is duly elected and qualified.

6th. The qualified voters of each county shall elect one Prosecuting Attorney, at a general election, who shall hold his office for three years.

7th. The qualified voters of each judicial district shall elect, at a general election, one Clerk of the Supreme Court, who is a resident thereof, and who shall hold his office for five years.

8th. The qualified voters of each county, at a general election, shall elect a Clerk of the District Court, who shall hold his office for five years, and until his successor is duly elected and qualified.

9th. The style of all process shall be, "The State of Iowa;" and all prosecutions shall be conducted in the name and by the authority of the same.²⁷

This report consisted of nine sections and was in content very similar to that outlined in the Constitution of 1844. The chief points of difference between the committee's report and the Article on the Judiciary of the previous Convention was that it made the judges of the Supreme Court elective by the people, and increased the term of judges of the Supreme and district courts from four to five years. It likewise provided that the General Assembly at its first session should divide the State into four districts for judicial purposes instead of three districts as provided in the former Constitution.

When the report of the Judiciary Committee was taken up for consideration section one providing for the location of the judicial power in the courts received a minor amendment by having the word "other" stricken out of the phrase, "and such other inferior courts". The amendment in no wise affected the intent of this provision.²⁸ Section two which provided for the number of judges for the Supreme Court was adopted without change.

Sections three and four providing for the election of judges to the Supreme and district courts were, in this as well as in the previous Convention, the chief point of contention. The question was again debated in much the same manner as in the Convention of 1844, as to whether the judges should be subject to popular election, or to election by a joint ballot of the General Assembly. The report of the Committee on the Judiciary made both the Supreme Court judges and the district judges elective by the people

²⁷ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1846, pp. 32-34.

²⁸ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1846, pp. xiii, 33, 41.

which was a departure from the previous Constitution, which made only the district judges elective by the people, and the Supreme Court judges elective by a joint ballot of the General Assembly. George W. Bowie now proposed a different method of selection, one that had not been even considered in the previous Convention. He proposed to amend sections three and four so as to make the judges of the Supreme Court and the district courts appointive by the Governor by and with the advice and consent of two-thirds of the Senate. J. Scott Richman then offered an amendment to make judges of the Supreme Court appointive for life or during good behavior.²⁹

In defense of his proposal Mr. Bowie said that he did not wish to deny that the people were competent to select good judges; in fact he had the utmost confidence in the ability of the people to select these officers, but he objected to their doing so because men who would be qualified in learning and integrity for the position of judge would hesitate to run the gauntlet of public scrutiny and would, as a consequence, be eliminated from the holding of this important office.³⁰

Mr. Hoskins stated that he had conversed with many of the people of his county and he was positive that a large majority of them were in favor of electing all judicial officers and would be reluctant to consent to the selection of these officers by any other power, because this was a prerogative which they felt fully competent to exercise.³¹

Following Mr. Hoskins's statement of the will of the people of his county, Samuel A. Bissell addressed the Con-

²⁹ Shambaugh's *Fragments of the Debates of the Constitutional Conventions of 1844 and 1846*, p. 321.

³⁰ Shambaugh's *Fragments of the Debates of the Constitutional Conventions of 1844 and 1846*, pp. 321, 322.

³¹ Shambaugh's *Fragments of the Debates of the Constitutional Conventions of 1844 and 1846*, p. 323.

vention in opposition to the amendment which proposed to take the privilege of selecting judges away from the people. Public opinion, he said, "is the only test of the character of a public man — and no where can public opinion be so independently and directly expressed as at the ballot box. If our Judges are to be appointed by the Governor and Senate, they will be very likely to be influenced by the representations of men whose only wish will be, to secure the office for their favorite."³²

Section three dealing with the election of judges of the Supreme Court was finally amended after having been twice referred to a special committee. The amendments added thereto made the Supreme Court judges elective by a joint vote of the General Assembly, and increased their term from five to six years. They were also declared to be ineligible for any other office during the term for which they were elected. Section four, relating to judges of the district courts, was amended so as to make the judges of these courts ineligible to any other office during the term for which they were elected. The selection of district judges was, however, left to the people.³³

Sections five, six, and eight of the original report on the judiciary dealing with the election of a probate judge, prosecuting attorney, and clerk of the district court were dropped and a substitute combining all of these provisions in a single section was proposed. This substitute section read as follows:

The qualified voters of each county, shall, at the general election, elect one Judge of Probate, one Prosecuting Attorney, and one

³² Shambaugh's *Fragments of the Debates of the Constitutional Conventions of 1844 and 1846*, pp. 325, 326.

³³ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1846, pp. 33, 41, 64, 65, 66, 67, 68, 74, 95; Shambaugh's *Fragments of the Debates of the Constitutional Conventions of 1844 and 1846*, pp. 321-328.

Clerk of the District Court, who shall be residents thereof, and who shall hold their several offices for the term of two years, and until their successors are elected and qualified.³⁴

This proposed substitute was agreed to upon a division of the question. The section which became section five of the Article on the Judiciary in the Constitution differed, however, from the substitute in that it did not provide for the election of a judge of probate. This change must have been made in the Committee on Revision for no record of the change is made in the journal of the Convention.

The election of a clerk of the Supreme Court by popular vote in each judicial district, as provided in the seventh section of the original report on the judiciary, was dropped by the Convention. This no doubt followed from the fact that the election of judges of the Supreme Court was transferred from the electorate to the General Assembly.³⁵

Only one other section of the original report remains for consideration. This section which appeared as section nine in the report related to the style of all process. It was agreed to without change, and owing to other changes made in the original report it became section six of the Article on the Judiciary in the Constitution of 1846.³⁶ This article as finally agreed upon by the Convention was expressed in the following language:

JUDICIAL DEPARTMENT

1. The Judicial power shall be vested in a Supreme Court, District Courts, and such inferior courts, as the General Assembly may from time to time establish.

2. The Supreme Court shall consist of a Chief Justice and two Associates, two of whom shall be a quorum to hold court.

³⁴ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1846, pp. 68, 69.

³⁵ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1846, p. 69.

³⁶ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1846, pp. xiv, 33, 34.

3. The Judges of the Supreme Court shall be elected by a joint vote of both branches of the General Assembly, and shall hold their courts at such time and place as the General Assembly may direct, and hold their offices for six years, and until their successors are elected and qualified, and shall be ineligible to any other office during the term for which they may be elected. The Supreme Court shall have appellate jurisdiction only in all cases in chancery, and shall constitute a court for the correction of errors at law, under such restrictions as the General Assembly may by law prescribe. The Supreme Court shall have power to issue all writs and process necessary to do justice to parties, and exercise a supervisory control over all inferior judicial tribunals, and the Judges of the Supreme Court shall be conservators of the peace throughout the State.

4. The District Court shall consist of a Judge who shall be elected by the qualified voters of the district in which he resides, at the township election, and hold his office for the term of five years, and until his successor is duly elected and qualified, and shall be ineligible to any other office during the term for which he may be elected. The District Court shall be a court of law and equity, and have jurisdiction in all civil and criminal matters arising in their respective districts, in such a manner as shall be prescribed by law. The Judges of the District Courts shall be conservators of the peace in their respective districts. The first session of the General Assembly shall divide the State into four districts, which may be increased as the exigencies require.

5. The qualified voters of each county, shall at the general election, elect one Prosecuting Attorney, and one Clerk of the District Court, who shall be residents therein, and who shall hold their several offices for the term of two years and until their successors are elected and qualified.

6. The style of all process shall be "the State of Iowa" and all prosecutions shall be conducted in the name and by the authority of the same.³⁷

The organization of the judiciary as provided in the new Constitution was the same as that in the old Constitution, the only difference being that under the old the judges of

³⁷ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1846, pp. xiii, xiv.

the Supreme Court and of the district courts were elected for a term of four years whereas under the new Constitution the term of Supreme Court judges was extended to six years, and that of the district court judges to five years. Judges were also made ineligible for any other office during the term for which they were elected. The old Constitution provided for the office of judge of probate, an office not included under the judicial organization provided for in the Constitution of 1846. On the whole there is a close similarity in the judicial organization as provided by the Constitutions of 1844 and 1846.

The labors of the Constitutional Convention of 1846 were completed on Tuesday morning, May 19th, after a session of sixteen days. When the new Constitution was received by the public the debates and newspaper comments upon this phase of the Constitution relating to the judiciary were very similar to those which had been evoked by this same article in the Constitution of 1844.³⁸

The Iowa Capitol Reporter in commenting upon the method of selecting judges stated:

The article upon the judiciary is a compromise with reference to the manner of selecting the judges. We would have preferred that the Supreme, as well as the District judges, should have been made elective by the people; but many of the Delegates who were in favor of that policy, believed that public opinion was not yet fully prepared for it, and conceded their views accordingly.³⁹

The objections of the Whig party to this portion of the new Constitution are well expressed in a speech of Wm. Penn Clarke to the electorate of Muscatine, Johnson, and Iowa counties. In this speech he said that he opposed the Constitution because it proposed "an experiment with our

³⁸ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1846, p. 107.

³⁹ Shambaugh's *Fragments of the Debates of the Constitutional Conventions of 1844 and 1846*, p. 339.

judiciary system.—An *elective* judiciary is one of the vagaries which has grown up out of the party strife of the country, and is calculated to disrobe our Courts of Justice of their sacred character and impair the confidence the people ought to, and do entertain in the integrity of our judges.” Such an experiment had been tried in but a single State — Mississippi — and there it had worked corruption and increased crime. The effect of a constitutional provision making judges elective by the people would be to place political partisans upon the bench. Mr. Clarke further declared:

In a whig district we shall have a *whig* judge; in a democratic district, a *democratic* judge. If the position is correct when applied to the judge of the *law*, it is equally applicable to judges of the *fact*; yet were the Constitution to provide that in democratic counties, there should be none other than democratic jurors, and in whig counties, none but whig jurors, the proposition would be greeted with an universal burst of indignation. The second effect will be, to elevate to the judiciary second or third rate men in point of talents and legal acquirements. Partisan Conventions will be followed round by men of this class — most of them *party hacks* — claiming a nomination to the judgeship, as the reward of political services. Lawyers of talents and character, whose conduct and integrity secure them an ample practice, will not degrade themselves by coming into competition with such men. Thus it is reduced to probability that our courts will be filled by judges, whom, as *lawyers*, the people would hardly trust with a three-shilling case. Are the people prepared to confide the judiciary — that department of the government which is to decide upon their dearest rights — to such hands? To show that these will be the inevitable results of the proposed experiment, I need only to delineate the manner in which party nominations are made — the maneuvering of aspirants to pass the ordeal of a party convention, and the character of the class of men which constitutes these self-created assemblages. Still another effect follows, equally detrimental to the public interest. Political judges never can command the entire confidence of the great mass of the community. Those who have been arrayed

against them in the canvass — with whom they have been engaged in party conflict — will watch their conduct with the strictest vigilance, ready to denounce on the slightest suspicion of partiality to a political favorite, and liable to misrepresent their decisions to the public; whilst the judges themselves, just out of the excitement of a violent contest, with the worst passions of their nature aroused, will be incapable of deciding causes in which their opponents may be parties or engaged, free from those prejudices, and with that calm deliberation, which should mark judicial decisions. So long as human nature is what it is, this effect will be produced, and the lightest suspicions of wrong, will be “confirmation strong as holy writ.”

The natural result of this stage of things must be to drag the decisions of the judges from the sacred temples of Justice, into the political arena, there to become themes for popular discussion, and newspaper animadversion. Here, again, will partisan strife be renewed. The minority will labor to make capital against the judge, in view of the next election, whilst his political friends will be equally zealous in sustaining his conduct. The judge himself, it may be, will descend from his tribunal, throw aside his robe of office, and enter the ring, desirous of breaking a lance in his own defense. But the numbers which made the judge possess the numerical strength to sustain him, and however wrong may have been his conduct, or illegal his decisions, an excited party will be loath to condemn their representative and put another in his place. Thus the laws may be disregarded — injustice perpetrated by those whose duty it is made to prevent it — individual rights impaired — and the nearest interests of the citizen blasted — and all without a remedy! Is not this a beautiful system? Yet such, I entertain no doubt, will be its natural and inevitable results. Those, then, who vote for the ratification of the Constitution, vote for a judiciary system, radically defective, and which is liable to great abuse.⁴⁰

Although a strong endeavor was made to defeat the new Constitution both by the Whigs and by those who were entirely opposed to State organization, sentiment in its favor was sufficiently strong to secure its ratification at the polls

⁴⁰ Shambaugh's *Fragments of the Debates of the Constitutional Conventions of 1844 and 1846*, pp. 355, 356.

on August 3, 1846, by the small majority of four hundred and fifty-six votes. The act of Congress defining the boundaries of the new Commonwealth was approved by President James K. Polk on August 4th, and finally, on December 28th, Iowa was admitted into the Union as one of the United States.⁴¹ From this time on the judicial system set up by the Organic Act of June 12, 1838, ceased to operate and a system of State courts as provided in the new charter of government took its place.

THE JUDICIARY AS PROVIDED BY THE CONSTITUTION OF 1857

The Constitution of 1846 contained a provision which prohibited the establishment of corporations for the purpose of banking, or the making of paper to circulate as money throughout the State. The object of this provision was to protect the people of Iowa against the evils that were at that time prevalent among banking institutions. Far from securing the desired end, however, the constitutional provision above referred to merely denied the people the benefits of banking institutions and failed to protect them against its evils and abuses, for Iowa was flooded with bank notes and shinplasters from the other Commonwealths.⁴² To remove this restriction in regard to banking corporations was one of the chief factors which led to the calling of a Constitutional Convention in 1857. One other factor that is also frequently referred to as contributing to the demand for constitutional revision was the method of selecting Supreme Court judges under the Constitution of 1846.⁴³

⁴¹ Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 185, 186.

⁴² Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 217, 218.

⁴³ Erbe's *Constitutional Provisions for the Suffrage in Iowa* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XXII, p. 185.

The only way in which the Constitution of 1846 could be revised or amended was through the calling of a Constitutional Convention. This was not an easy matter, and so it was that those who favored constitutional revision labored with untiring efforts to secure the passage of an act by the General Assembly to have the question of calling a Constitutional Convention submitted to the people. It was not, however, until 1855 that these efforts were rewarded.⁴⁴

According to the provisions of the act of January 24, 1855, the question of calling a Constitutional Convention to revise or amend the Constitution was submitted to the people at the August election in 1856 for approval or rejection. The proclamation issued by Governor James W. Grimes following this election showed that there were 32,790 votes polled in favor of a convention and 14,162 against it.⁴⁵ The Convention Act having been approved by the people, the next step was the election of delegates to a Convention to revise the Constitution. Sections four and five of the act for the Convention provided for the election of as many delegates as there were Senators in the General Assembly — thirty-six — at an election to be held on the first Tuesday after the first Monday in November. The delegates chosen at this election assembled at Iowa City on January 19, 1857, in accordance with the provisions of the act under which they were elected.⁴⁶

The first meeting of the Convention was called to order by Hosea M. Gray of Linn County. Three delegates had failed to put in their appearance at the time the first roll was taken. Little business was transacted on the first day

⁴⁴ Erbe's *Constitutional Limitations on Indebtedness in Iowa* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XXII, p. 379.

⁴⁵ Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 221, 222.

⁴⁶ Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 217, 218, 219.

and permanent organization was not attempted until the day following when Francis Springer was chosen President of the Convention. On the third day the rules which were to govern the procedure of the Convention were adopted, and the membership of the various standing committees announced. To the Committee on the Judicial Department the president appointed Wm. Penn Clarke, Daniel H. Solomon, James F. Wilson, Jonathan C. Hall, and Rufus L. B. Clarke.⁴⁷ The members of this committee all belonged to the legal profession and all were very prominent members in the Convention. All were Republicans except Mr. Hall and Mr. Solomon. No standing committee in the whole Convention was better qualified or more capable of performing its special task than was the Committee on the Judiciary.⁴⁸ The report of this select committee was made on the tenth day following its appointment. As presented by the chairman, Wm. Penn Clarke, this report read:

Section 1. The Judicial power of this State shall be vested in a Supreme Court, Superior Courts, District Courts, and such inferior Courts as the General Assembly may, from time to time, establish.

Sec. 2. The State shall be divided into four judicial districts, to be bounded by county lines, and as compact and equal in population and territory as nearly as may be; in each of which districts, at the first general election under the Constitution, one Supreme Judge and three District Judges, who shall be residents of their respective districts, shall be elected by the people. The Supreme and District Judges so elected, shall be classified so that one Judge of the Supreme Court, and one of the District Judges in each district, shall go out of office every two years. The judge of the Supreme Court holding the shortest term of office under such classification, shall be Chief Justice of the Court during his term, and so on in rotation. After the expiration of their terms of office under such classification, the term of each Judge of the Supreme Court

⁴⁷ *Journal of the Constitutional Convention of the State of Iowa, 1857*, pp. 4, 5, 10, 23-25, 26, 27.

⁴⁸ Eriksson's *The Framers of the Constitution of 1857* in *THE IOWA JOURNAL OF HISTORY AND POLITICS*, Vol. XXII, pp. 58, 59, 78-81.

shall be eight years, and the term of office of each District Judge six years, and until their successors are elected and qualified.

Sec. 3. The Supreme Court shall consist of the four Judges elected as required by the foregoing section, three of whom shall constitute a quorum. They shall hold their Court at such time and place as the General Assembly may prescribe, and shall be ineligible to any other office in the State during the term for which they were elected.

Sec. 4. The Supreme Court shall have appellate jurisdiction only in cases in chancery, and shall constitute a Court for the correction of errors at law, in all cases that may be appealed from the Superior Court, under such restrictions as the General Assembly may, by law, prescribe; and shall have power to issue all writs and process necessary to secure justice to parties, and exercise a supervisory control over all inferior judicial tribunals throughout the State.

Sec. 5. The Superior Courts shall be held in each district at such time and place as the General Assembly may prescribe; shall consist of the Judges of the District Courts of that district, two of whom shall constitute a quorum; and the Judge holding the shortest term of office shall be the Chief Justice of the Court of his district, and so on in rotation.

Sec. 6. The Superior Courts shall have appellate jurisdiction only in all cases in chancery, and constitute a Court for the correction of errors at law within their respective districts, under such restrictions as the General Assembly may prescribe; and shall have power to issue all writs and process necessary to secure justice to parties, and exercise a supervisory control over all inferior judicial tribunals within their respective districts.

Sec. 7. The District Court shall consist of a single Judge, and the District Judges of each district shall hold Court in each county, alternately, at such time and place as the General Assembly may prescribe.

Sec. 8. The District Court shall be a Court of law and equity, which shall be distinct and separate jurisdictions, and have jurisdiction in all civil and criminal matters arising in their respective districts, under such restrictions as may be prescribed by law.

Sec. 9. The salary of each Judge of the Supreme Court shall not be less than two thousand five hundred dollars, nor more than five thousand dollars per annum. The salary of each Judge of the District Court shall not be less than two thousand, nor more than four

thousand dollars per annum; and the salary of no judge of either Court shall be increased or diminished during his term of office.

Sec. 10. The Judges of the Supreme and District Courts shall be conservators of the peace throughout the State.

Sec. 11. After the year 1860, the General Assembly may re-organize the judicial districts, and increase or diminish the number of districts, or the number of Judges of the Supreme or District Courts; but such increase or diminution shall not be more than one district, or one Judge of either Court at a time; and no re-organization of the districts, or diminution of the Judges shall have the effect of removing a Judge from office. Such re-organization of the districts, or increase or diminution of the Judges shall take place every five years thereafter, if necessary, and at no other time.

Sec. 12. The Supreme and Superior Courts shall have the power to appoint the necessary Clerk for each Court, and a Reporter of their decisions. The other officers of the Courts shall be provided for by law.

Sec. 13. The Judges of the Supreme and District Courts shall be chosen at the general election, and the term of office of each Judge shall commence on the first day of January next after their election.

Sec. 14. The General Assembly shall provide by law for the election of an Attorney General by the people, whose office shall be kept at the seat of government.

Sec. 15. The qualified electors of each county shall elect, at such times as may be prescribed by law, one Prosecuting Attorney, and one Clerk of the District Court, who shall be residents therein, and hold their several offices for the term of two years, and until their successors are elected and qualified.

Sec. 16. When any vacancy shall occur in the office of any Judge of the Supreme or District Courts, before the expiration of the regular term for which he was elected, the same shall be filled by appointment by the Governor, until it shall be supplied at the next general election, when it shall be filled by election for the residue of the unexpired term.

Sec. 17. The General Assembly may provide by law for the creation of a temporary Court for the trial of any Judge of either the Supreme or District Court, or any other State officer, who may be charged with incompetency or misconduct. If a Judge of the Supreme Court is a subject of the charge, four of the Judges of the District Court, selected from the respective districts, shall consti-

tute a Court to investigate the charge. If the complaint is made against a Judge of the District Court, or any other officer of State, the Supreme Court shall have original jurisdiction of, and constitute a Court to investigate the same. The charge shall be made by petition, under oath, and the cause shall be tried by the Court.

Sec. 18. The style of all process shall be: "The State of Iowa"; and all prosecutions shall be conducted in the name and by the authority of the same.⁴⁹

Rufus L. B. Clarke, a member of the committee making this report, stated to the Convention that he concurred with the majority report with but a few exceptions. In the first place he objected to the election of judges of the Supreme Court by districts. He thought that they should be elected at large by the people of the State. Mr. Clarke favored the subdivision of each district into four circuits and would have one judge elected from each circuit. He also favored the election of a prosecuting attorney in each circuit. In his opinion no judge should be tried for incompetency, unless the charge were presented by a majority of the General Assembly.⁵⁰

A minority report was also presented at this time which was signed by Wm. Penn Clarke. The judicial organization provided by this report was very similar to that provided in the Constitution of 1846, the chief point of difference being the manner of electing judges. The Supreme Court judges were made elective by the people and one judge was to be elected from each circuit.⁵¹

The radical point of difference between the majority and minority reports of the Committee on the Judiciary is that the majority report provided for the creation of three

⁴⁹ *Journal of the Constitutional Convention of the State of Iowa, 1857*, pp. 97-99.

⁵⁰ *Journal of the Constitutional Convention of the State of Iowa, 1857*, p. 99.

⁵¹ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 116-118, 227; *Journal of the Constitutional Convention of the State of Iowa, 1857*, pp. 100-102.

courts: a district court; a superior court which was to be the supreme court of the district and was to consist of the district judges of the district in which the court was located; and, lastly, a Supreme Court, which was to be similar to the Court of Appeals in the State of New York.⁵² The question then upon which the Judiciary Committee could not agree was whether there should be a supreme court for each district or whether the system should remain as it then operated. Should there be two courts or three courts?

Harvey J. Skiff favored the majority report because it would cheapen litigation and bring the courts nearer to the people. The two court system was feasible for those who lived near the place for holding sessions of the Supreme Court, for they could carry their cases to this court with little expense. On the other hand if superior courts were established as provided in the majority report, for the purpose of correcting errors in cases that arose in the district courts, many of the cases that then went to the Supreme Court for determination would be corrected in the superior courts. This would reduce the number of Supreme Court cases and make their reports less voluminous. As a consequence the reports would be of greater value in that the decisions contained therein would be of the more important cases.⁵³

J. C. Hall favored the three court system because he was positive that a two court system could not long serve the needs of such a rapidly developing Commonwealth as Iowa. In fact he was fully persuaded that the legislature, even under a three court system as proposed in the majority report, would in a very short time be called upon to establish superior courts in the cities in order to handle the

⁵² *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, p. 227.*

⁵³ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, p. 229.*

increasing judicial business that would increase with the rapid development of the State.⁵⁴

Rufus L. B. Clarke could see no grounds for objection to the majority report, for it was "no innovation, no new and untried system". It was one that had been practically treated in other States, and was therefore the embodiment of actual practice. It was said that this system would be too complex. Mr. Clarke answered this objection by asking, "Why is your State divided into counties, townships, and again subdivided into school districts?" His answer was: "It is done, in order that you may more conveniently carry on the whole machinery of the government. As well might gentleman complain of the complexity of this political machinery, as of that of the judicial system which we propose here, and which divides and simplifies our proceedings, instead of making them more complex. The system which we propose, is modelled upon that of the United States, and comprises a supreme court, district court, and a circuit court, and it is under this form, and upon these principles that I wish to have it presented before this body."

On the other hand, Mr. Clarke objected to the then existing system because under it a majority of the cases coming before the Supreme Court were brought there upon some simple question that could well be decided by an intermediate court without the expense and delay involved in carrying it to the highest tribunal in the State.⁵⁵

James F. Wilson declared himself in favor of a system as nearly like that provided by the Constitution of 1846 as possible since the people of the Commonwealth had demanded no change. One of the objections to the present judiciary system was that the same question arising in

⁵⁴ *The Debates of the Constitutional Convention of the State of Iowa*, 1857, Vol. I, p. 231.

⁵⁵ *The Debates of the Constitutional Convention of the State of Iowa*, 1857, Vol. I, pp. 234-236.

different district courts would frequently be decided differently in the different courts, and there might be as many decisions as there were districts in the State. The same difficulty would arise under a system having intermediate courts. The decision of one court would be no authority in another and in order to obtain an authoritative decision which would be recognized by the legal profession it would be necessary to carry the litigation to the Supreme Court or highest tribunal in the State. For this reason Mr. Wilson believed that litigation would not be cheapened under the judicial system proposed by the majority of the Committee on the Judiciary. Since the new Constitution would contain a provision whereby it could be amended, Mr. Wilson felt that the old judicial system should be retained with as little change as possible.⁵⁶

The majority report was supported by John T. Clark because he had practiced some four or five years in New York State under a system very similar to that proposed by the majority of the Judiciary Committee. He asserted that the people of New York were not tired of that system and that no inducement could be held out to them that would cause them to go back to their old system. Mr. Clark was decidedly in favor of a change in the judicial system like the one proposed in the majority report. It was his understanding that the revision of the article providing for the judiciary was one of the reasons why the Convention was called. But, he said, "if there had been no such demand, if we, sitting here, could conceive of the necessity of such a change, even prospectively, it is our duty to make it. And so far from being a drawback, a deadweight upon the constitution, when submitted to the people for their approval, I am satisfied that it will be

⁵⁶ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 236-238.

the means of adding a large amount of votes to it, at least in the portion of the State from which I come. It is true, perhaps, that the banking question absorbs more of the attention of the people than any other question that led to the calling of this convention; but, second to that, I place the desire for a change in our judicial system.”⁵⁷

A statement made by Mr. Wilson that there was no demand on the part of the people for a revision of the judicial system of the State was challenged by John H. Peters, who said: “For one, I would say that in the country where I reside, there was no one subject which assisted more in bringing about a revision of the constitution than a change in the judicial system; and I think there is no one question — not even excepting the banking question — in which the people feel a deeper interest, than in this change now proposed by the majority of the committee on the judiciary.”⁵⁸

Robert Gower on the other hand said that to his knowledge his constituents did not demand much of a change in the judiciary of the State. Other than suggestions that Supreme Court judges be elected by the people at the end of their present term of office, nothing had been said in this regard. George Gillaspay voiced the same opinion in regard to his constituents. “The universal expression among them is that the present judiciary system is well enough as it is at present, and the only change needed is that the supreme court judges should be elected by the people.”⁵⁹

All of Wednesday afternoon, February 4th, Thursday

⁵⁷ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 238-240.*

⁵⁸ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, p. 241.*

⁵⁹ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 254, 257.*

forenoon, February 5th, and a part of Thursday afternoon was spent in discussing the reports of the Committee on the Judiciary. During the progress of the discussion many arguments similar to those already referred to were advanced either in favor of a three court system or a two court system. The debate was no doubt prolonged by the fact that there was a great deal of disagreement among the members of the committee on both reports. In fact those who favored the majority report claimed that they were unaware that minority report was to be rendered. Mr. Hall and Mr. Solomon favored the majority report, and Rufus L. B. Clarke concurred in most of its provisions. He strongly favored a three court system. Wm. Penn Clarke without question was the author of the minority report. James F. Wilson favored the latter report in that it provided for a two court system. In fact he was convinced that there was no demand for a change in this article of the Constitution.⁶⁰ Owing to the fact that there was no concurrence of opinion among the committee themselves, those of the committee who favored a three court system finally succeeded in having both reports referred back to the Committee on the Judiciary. Thereupon Rufus L. B. Clarke submitted the following majority report:

Section 1. The judicial power shall be vested in a Supreme Court, District Courts, Circuit Courts, and such other inferior Courts as the General Assembly may establish.

Sec. 2. The Supreme Court shall consist of a Chief Justice and two Associate Justices, two of whom shall be a quorum to hold Court. They shall be elected by the people of the State at large, and shall hold their office six years (except as herein provided), and until their successors shall be elected and qualified. The salary of each shall not be less than two thousand dollars nor more than five thousand dollars per annum, to be fixed by law, and not changeable during their term of office.

⁶⁰ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 254-257.*

Sec. 3. The State shall be divided into three judicial districts, to be bounded by county lines, and as nearly equal in population and territory as may be, and each of said districts shall be subdivided in the same manner, into four divisions called circuits.

Sec. 4. There shall be twelve District Judges, who shall also be Circuit Judges, one of whom shall preside, after his election, in each of the said circuits; shall be elected by the people of the districts at large, and to hold office for four years, (except as herein provided,) and until their successors are elected and qualified; and shall have each a salary of not less than one thousand dollars, nor over three thousand dollars, and not changeable during their term of office.

Sec. 5. At the first election of judicial officers under this Constitution — which shall be at the first general election after its adoption — they shall be so classified, under provisions of law, that one of the Supreme Court Judges shall go out of office every two years, and one of the District Judges in each district shall go out of office every year, and their successors shall be elected for the fall terms. The Justice of the Supreme Court having the longest term at the first election, shall be Chief Justice; and after the expiration of his term, the Justice longest presiding shall be Chief Justice. And in each district the Judge elected for the longest term shall be Presiding Judge, and after the expiration of his term, the Judge longest presiding shall be Chief Justice. And in each district the Judge elected for the longest term shall be Presiding Judge, and after the expiration of his term, the Judge longest presiding shall be thus designated.

Sec. 6. The resident Judge in each circuit shall hold the courts therein, except when otherwise provided by law, and the Circuit Court shall be courts of law and equity, having jurisdiction in each, over all matters, civil or criminal, arising in their respective circuits, under such regulations as the law may provide.

Sec. 7. The District Courts shall be composed by the meeting of the Circuit Judges in each district in bank, at such times and places as shall be provided by law; any three of whom shall constitute a quorum to hold a court; but no Judge shall vote, or join in an opinion, in a case which was tried before him in the Circuit Court; nor in which he may be or may have been interested; nor in which he may be, or may have been connected as attorney or counselor at law. The General Assembly may make provisions for justices of

the Supreme Court, and Judges from another district, to sit upon the bench of the District Courts in cases where it may be necessary, or for the good of the public.

Sec. 8. The District Courts shall have exclusive jurisdiction in all matters arising in the Circuit Courts of their respective districts, and brought up on appeal or writ of error, in such manner as shall be provided by law, except in cases where the law may provide for their going directly to the Supreme Court.

Sec. 9. The Supreme Court shall have appellate jurisdiction in chancery, and constitute a court for the correction of errors at law, in all cases coming from the District Courts; and in such cases from the Circuit Courts as the law may provide; — and shall have the right to appoint its own clerk and reporter.

Sec. 10. There shall be a clerk of the Circuit Court elected in each county where a term of such court shall be appointed by law to be held, who shall also be clerk of the District Court in those counties where said District Courts shall be appointed by law to be held.

Sec. 11. Each of said courts shall exercise a supervisory control over all inferior courts within the limits of their respective jurisdictions and be conservators of the peace therein; they shall have power to issue all usual writs and process and to enforce the same.

Sec. 12. No judicial officer, provided for herein, shall be eligible to any other office during the term for which he shall be elected; except that district judges shall be eligible to the office of Justice of the Supreme Court; and their terms of office shall commence the 1st of January next after their election, but in cases of a vacancy the same may be filled by appointment by the Governor, until it shall be supplied at the next general election, when it shall be filled by election for the residue of the unexpired term.

Sec. 13. It shall be the duty of the General Assembly to make such provisions by law as shall be necessary for the carrying into effect of this article and to provide for a regular system of practice in all the courts of the State. To provide for the election of an Attorney General to reside at the Capital and for the election of Prosecuting Attorneys in each circuit, in lieu of the Prosecuting Attorneys in the several counties, and to prescribe their powers, duties, terms of office and salary.

Sec. 14. The style of all process shall be, "The State of Iowa;"

and all prosecutions shall be conducted in the name and by authority of the same.

Sec. 15. After the year 1860, the General Assembly may re-organize the judicial districts, and increase or diminish the number of districts, or the number of Judges of the Supreme or District Courts; but such increase or diminution shall not be more than one district, or one Judge of either Court at a time; and no re-organization of the districts, or diminution of the Judges shall have the effect of removing a Judge from office. Such re-organization of the districts, or increase or diminution of the Judges shall take place every five years thereafter, if necessary, and at no other time.

Sec. 16. The Supreme Court, with one District Judge from each district, to be selected as shall be provided by law, shall form a Court for the trial of all impeachments, except in cases where a Justice of the Supreme Court is upon trial, when the Court shall be composed of the District Judges, a majority of whom shall constitute a quorum. Incompetency shall be a ground for impeachment, in a judicial officer; and all impeachments must be found by the General Assembly.⁶¹

Following the submission of this report Wm. Penn Clarke inquired as to what had become of the minority report, and upon being informed that it had been referred to the the Judiciary Committee along with the former majority report, he immediately, upon his own responsibility, submitted the same minority report to the Convention. At this time the new majority report was laid upon the table until copies of it could be had for use by the members of the Convention.⁶²

The judicial organization as provided in the new majority report still retained the three court idea. It would divide the State into three districts with four district judges elected by the people of the district at large. Each of the three districts was to be sub-divided into four

⁶¹ *Journal of the Constitutional Convention of the State of Iowa, 1857*, pp. 124-127.

⁶² *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 259, 260.

circuits, and each of the four judges elected in each district was to be judge of one of the circuits and to reside after his election in the circuit over which he was to preside. The circuit courts were to be courts of law and equity with jurisdiction in all civil or criminal matters arising within their respective circuits, under such regulations as might be provided by law. The district courts under the proposed scheme were to be composed of the circuit judges of each district, who were to meet in bank at such times and places as the law might prescribe. Each district court was to have exclusive jurisdiction over all matters arising in the circuit courts and brought up on appeal or writ of error from their respective districts. The Supreme Court was to consist of a chief justice and two associate justices to be elected by the people of the State at large for a term of six years. This court was given appellate jurisdiction in chancery, and was to stand as a court for the correction of errors at law in all cases appealed to it from the district courts, and in cases legally brought to it by the circuit courts.

When the new majority report was taken up for consideration in Committee of the Whole, objection was immediately raised against the three court system. An amendment was proposed to the first section eliminating the intermediate courts and making the judicial organization consist of a two court system. Vigorous debates favoring both schemes were continued for some time, and no division was made on party lines. Both Democrats and Republicans were divided in their opinions upon this important question which proved difficult of solution. Finally, however, the committee succeeded in getting a vote upon the proposed amendment to decide whether the majority of the Convention favored a two or three court system. When the question was put, the amendment carried, fifteen mem-

bers voting for it and ten against it.⁶³ By this vote the Convention declared itself in favor of a two court system. Many, however, who opposed the three court system, opposed it on the grounds that it was too complex for such a sparse population as Iowa then had. They believed that five or ten years hence such a system as certain members advocated would be conducive to efficient judicial administration in the State. Thus, it will be noted that the Constitution framers, while they voted in favor of a two court system, were careful not to make it too difficult to introduce a three court system whenever the people desired it.⁶⁴

Scarcely had the vote been taken favoring the two court system when Rufus L. B. Clarke presented the majority report with the provisions relating to the circuit court stricken out as a substitute for the report as presented. This in his opinion would obviate the objections which many of the delegates entertained toward the majority report. Wm. Penn Clarke, however, moved to lay the substitute upon the table and to take up a consideration of the minority report. His motion was concurred in and the Committee of the Whole proceeded to consider the minority report.⁶⁵

Immediately following the reading of this report, Mr. Wilson, a member of the Judiciary Committee and champion of a two court system, proposed a substitute for the minority report. In substance the proposed substitute closely resembled the Article on the Judiciary in the Constitution of 1846, the chief difference being that he would

⁶³ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 430-438. See remarks of John T. Clark, p. 443.

⁶⁴ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 228, 243, 443.

⁶⁵ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 438, 439.

have the Supreme Court judges elected by the people instead of by a joint ballot of the General Assembly. The proposal of Mr. Wilson was laid upon the table. Soon afterwards Rufus L. B. Clarke moved to substitute the article in the old Constitution for the minority report. After a few brief remarks it was agreed that the Article on the Judiciary in the old Constitution should be substituted for the minority report,⁶⁶ and as the minority report was under consideration by the Committee of the Whole the discussions of the Convention in regard to the judiciary centered around this article as it appeared in the Constitution of 1846.⁶⁷

A proposal by Wm. Penn Clarke to strike out the word "inferior" and to insert the word "other" in section one which read: "The judicial power shall be vested in a Supreme Court, District Courts, and such inferior courts as the General Assembly shall from time to time establish", created lively discussion.

J. A. Parvin opposed this amendment because he said the Convention had already declared themselves opposed to a three court system, and if this word "inferior" should be stricken from this section the very next legislature would be besieged by every person in the State who favored a three court system.

To this Mr. Clarke, the author of the amendment, replied:

It seems to me that it is reasonable that we should leave to the legislature to increase the courts as the business and necessities of the state may require. A system that may answer our wants at this time, would not probably meet the necessities of the state in ten years from now; the commercial, manufacturing and other business facilities of the state will be increased by the construction of rail-

⁶⁶ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 440, 441, 442.*

⁶⁷ For an extract of the Article on the Judiciary in the Constitution of 1846, see pages 431, 432 above.

roads, and litigation will increase proportionately, so that the present system will be totally inadequate to the wants of the people. Is it not wise and prudent to so place power in the hands of the law-making branch of the government, in the hands of the agents of the people, that they may be able to increase these courts as the interests of the state may require? I think such power is conferred upon the legislature of almost every state.

I am opposed to this three court system, now, because I do not think it is demanded by the necessities and wants of the people. But it may be demanded five years hence, and I want the legislature to have the power to create these courts without imposing the necessity upon the people to call another convention to revise the constitution in that respect. I trust and believe that the legislature, as the representatives and agents of the people, will exercise this power carefully and properly.

John T. Clark speaking in regard to this amendment said:

I was in favor of the three court system, and I shall go in favor of striking out this word "inferior". If I cannot get what I want I will go for the next best thing I can get. I will not refuse half a loaf because I cannot get a whole one. I certainly think we should leave the constitution in such a shape that the legislature can create a third court if the people require it, and it will be beneficial to the State. What may be the best interests of the people of the State to-day, may not be in two years from now. And for the purpose of meeting the changes which must inevitably take place in the wants and conditions of the people of this State. I am in favor of leaving this constitution in such a shape that the legislature may be able to provide all that may be necessary.⁶⁸

Little opposition was offered to this amendment in Committee of the Whole and when the vote was taken it was agreed that the word "inferior" should be stricken out of section one.⁶⁹ Thus, the way was prepared whereby a

⁶⁸ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 443-445.*

⁶⁹ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, p. 445.*

three court system could be established by legislative action at any time the General Assembly was disposed to do so. In 1868 the legislature of Iowa did create such a system by the establishment of circuit and general term courts.⁷⁰ Later in the discussion of section one in the Convention attempts were made to restore to it the same intent as it contained in the Constitution of 1846. These attempts were, however, without success. The word "inferior" although stricken from this section in some manner or other crept back in, but in a place where it emphasized rather than detracted from the amendment made in Committee of the Whole. The section as finally adopted, read:

The judicial power shall be vested in a Supreme Court, District Court, and such other Courts, inferior to the Supreme Court, as the General Assembly may, from time to time, establish.

The next provision to create discussion was section two providing for the number of Supreme Court judges. The question was shall there be three judges or four judges. Mr. Hall believed that four was the proper number for a court of last resort. His reason for believing this was that where the court consisted of three judges, the absence of one judge would have the effect of destroying the bench, whereas the addition of another judge would greatly lessen the labors of the court. He said further:

Gentlemen may perhaps wonder, why I consider a Supreme Court of four to be better than a court of three or five. It is because of the certainty and confidence in the decisions of a court, that it commands respect for its decrees and becomes worth something. In a division of the court, where the number of judges is three, and they stand two against one, or four judges, and two to two, you would have no decision at all, and there would be no governing principle, either for that court or any other court. But when you go a step farther and say, there shall be four judges, then you have three against one, and you add considerable strength and

⁷⁰ *Laws of Iowa*, 1868, pp. 113-120.

authority to their decisions. There is no number, in my opinion, equal to "four," and this should be the number of judges of a court of last resort, whose decisions become law for other courts to follow. It should be one of the cardinal objects of this Convention to establish such a system as shall secure the respect and confidence of the people for the decisions of the Supreme Court.⁷¹

Wm. Penn Clarke concurred with the view of Mr. Hall for still another reason. With three judges, cases might be decided by two judges with a dissenting opinion. Such a decision would stand as an authority and yet it might represent an instance where two judges stood against two other judges, if the judge who held the dissenting opinion sided with the district judge or judge of the court below. Such authority Mr. Clarke regarded as unreliable.

Mr. Wilson objected to such views. In the first volume of Clarke's Reports he could find but six dissenting opinions in ninety-nine cases.

Rufus L. B. Clarke objected to paying a salary for a judge for just six cases. Besides, he said, if there were four judges the decision might be two to two, and consequently no decision would be rendered.

It was finally decided in Committee of the Whole that there should be but three judges, and that the section should remain as it stood in the old Constitution. In the Convention the language in section two was changed but the number of judges was left the same. The section as revised read: "The Supreme Court shall consist of three Judges, two of whom shall constitute a quorum to hold Court."⁷²

Section three providing for the election of judges of

⁷¹ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, p. 447, Vol. II, p. 1018.

⁷² *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 446-449, 462-467, Vol. II, p. 1018; *Journal of the Constitutional Convention of the State of Iowa, 1857*, Appendix, p. 14.

the Supreme Bench by joint vote of the General Assembly was next taken up for discussion. Mr. Wilson proposed to amend this section so as to make Supreme Court judges subject to election by the people of the State. Wm. Penn Clarke offered a substitute for the amendment of Mr. Wilson in which he proposed to divide the State into four judicial districts. One Supreme judge should be elected from each of the four districts. The object of this substitute was to remove the judges as far as possible from practical politics and still retain their selection by the people. It was argued that the people of a district would be acquainted with the person whom they selected for judge whereas if candidates were selected from the State at large this was not possible. Thus, the people in the district would vote for the man best qualified regardless of his politics, whereas in an election at large the selection of judges was bound to be partisan. Mr. Clarke in referring to the influence of politics upon the selection of judges said: "I want to have one department of our State government in regard to which we can say, there is no political taint or bias, there is no partizan complexion to it; it is of such a character that when we go before it to have our dearest rights decided, we may rest assured that they will be decided upon principles of law and equity, and not upon political or party principles."⁷³

Mr. Hall favored the idea of district selection of judges of the Supreme Bench rather than selection at large. In voting, he said, it is difficult to separate from that act the idea of representation. In other words it must be considered that the person elected and the people retain the relationship of representative and constituents. This to his mind was the only objection to the election of judges

⁷³ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 449, 450, 453.*

by the people for the idea is bound to persist that the judge must represent the persons who elected him, and consequently there will be a representative court. On the other hand if judges are elected by districts, it can scarcely fail to happen that there will be a court composed of judges elected from more than one party. The bench would be mixed and more confidence would be attached to such a court than if its judges had all been elected from a single party.⁷⁴

In supporting his amendment Mr. Wilson said that under his scheme the people would have an opportunity of voting for all of the judges as they had a right to do, whereas under the district system they would be confined to the selection of a single judge. "The people of the State have demanded that they shall be allowed to select all the judges of the Supreme Court, not one judge only. Yet by this district system you propose to give each voter but a part of the right which the people demand." Mr. Wilson favored a general ticket for the selection of Supreme Court judges.⁷⁵

George W. Ells opposed the district system because he believed that party complexion and party bias would operate as freely in a district as it would in the State at large. Men who wished to control a party could control a district even when they might not succeed in controlling the State. Party influence was bound to make itself felt regardless of whether judges were elected by districts or by the State at large. For this reason he favored retaining the old system of selection by joint vote of the General Assembly.⁷⁶

When the question was finally voted upon the district

⁷⁴ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 450, 451.

⁷⁵ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 451, 452.

⁷⁶ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 454, 455.

system was rejected and election of judges upon a general ticket by the State at large was agreed to.⁷⁷

In Convention it was agreed that the following should be added to section three:

After the first election of Supreme Judges under this Constitution, they shall be so classified, under provisions of law, that one of the Supreme Judges shall go out of office every two years. The justice of the Supreme Court having the shortest term at the first election, shall be chief justice; and at the expiration of his term, the justice holding the shortest term shall be chief justice.⁷⁸

The Article on the Judiciary was later referred to the Committee on the Judiciary at which time the amendment to section three above referred to was somewhat revised. Under the revised section judges were classified so that the judge holding the shortest term, that is who still had the fewest number of years in office before the expiration of his term, should be chief justice. It was also provided that judges of the Supreme Bench should be ineligible to any other office in the State during the term for which they were elected.⁷⁹

A great deal of time was spent in the consideration of section four which provided for the composition of the district court and the division of the State into judicial districts. As the section then read the General Assembly was authorized at its first session to divide the State into four districts which could be increased at any time as the exigencies might require. After brief discussion the word "four" was stricken out and "ten" inserted in its place, thus requiring the General Assembly at its first session to

⁷⁷ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, p. 455.*

⁷⁸ *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. I, pp. 471, 472.*

⁷⁹ *Journal of the Constitutional Convention of the State of Iowa, 1857, pp. 224, 225.*

divide the State into ten judicial districts. Some delegates wished to limit the legislature so that the number of districts could never be increased beyond ten. This attempt was unsuccessful. Later it was proposed to insert "thirteen" in place of "ten". This motion was ruled out of order by the President, and so after some deliberation the Article on the Judiciary with the amendments that had been proposed thereto was referred to the Judiciary Committee for revision.⁸⁰

Four days later, February 20th, the Committee on Judiciary reported the article back in revised form with the recommendation that the number of judicial districts be increased from ten to eleven. The Committee also recommended that the General Assembly be given power to reorganize the judicial districts, and to increase or diminish the number of judges of the district court, and likewise to increase but not decrease the number of Supreme Court judges every four years. The article as submitted left these portions blank so that the Convention might take any action upon the matter that it saw fit to take. As submitted to the Convention the revised article consisted of fourteen sections and read as follows:

Section 1. The judicial power shall be vested in a Supreme Court, District Courts, and such other Courts inferior to the Supreme Court, as the General Assembly may, from time to time, establish.

Sec. 2. The Supreme Court shall consist of three Judges, two of whom shall constitute a quorum to hold Court.

Sec. 3. The Judges of the Supreme Court shall be elected by the qualified voters of the State, and shall hold their Court at such time and place as the General Assembly may prescribe. The Supreme Judges so elected, shall be classified so that one Judge shall go out of office every two years; and the Judge holding the shortest

⁸⁰ *Journal of the Constitutional Convention of the State of Iowa, 1857*, p. 190; *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 456, 508, 509.

term of office under such classification, shall be Chief Justice of the Court during his term, and so on in rotation. After the expiration of their terms of office under such classification, the term of each Judge of the Supreme Court, shall be six years, and until his successor is elected and qualified. The Judges of the Supreme Court shall be ineligible to any other office in the State, during the term for which they are elected.

Sec. 4. The Supreme Court shall have appellate jurisdiction only in all cases in chancery, and shall constitute a court for the correction of errors at law, under such restrictions as the General Assembly may, by law, prescribe; and shall have power to issue all writs and process necessary to secure justice to parties, and exercise a supervisory control over all inferior judicial tribunals throughout the State.

Sec. 5. The District Court shall consist of a single Judge, who shall be elected by the qualified voters of the District in which he resides. The Judge of the District Court shall hold his office for the term of four years, and until his successor is elected and qualified; and shall be ineligible to any other office, except that of Supreme Judge, during the term for which he was elected.

Sec. 6. The District Court shall be a court of law and equity, which shall be distinct and separate jurisdictions, and have jurisdiction in civil and criminal matters arising in their respective districts in such manner as shall be prescribed by law.

Sec. 7. The Judges of the Supreme and District Courts shall be conservators of peace throughout the State.

Sec. 8. The style of all process shall be "The State of Iowa," and all prosecutions shall be conducted in the name and by the authority of the same.

Sec. 9. The salary of each Judge of the Supreme Court, shall be two thousand dollars per annum, and that of each District Judge sixteen hundred dollars per annum, until the year 1860; after which time, they shall severally receive such compensation as the General Assembly may, by law, prescribe, which compensation shall not be increased or diminished during the term for which they were elected.

Sec. 10. The State shall be divided into ——— District Court districts; and after the year 1860, the General Assembly may reorganize the judicial districts, and increase or diminish the number

of districts or the number of Judges of the said court, and may increase the number of Judges of the Supreme Court, but such increase or diminution shall not be more than one district, or one Judge of either court, at a time, and no re-organization of the districts, or diminution of the Judges shall have effect of removing a Judge from office. Such re-organization of the districts or increase or diminution of the Judges, shall take place every —— years thereafter, if necessary, and at no other time.

Sec. 11. The Judges of the Supreme and District Courts shall be chosen at the general election; and the term of office of each Judge shall commence on the first day of January next after his election.

Sec. 12. The General Assembly shall provide by law, for the election of an Attorney General by the people, whose term of office shall be two years, and until his successor is elected and qualified.

Sec. 13. The qualified electors of each judicial district shall, at the time of the election of District Judge, elect a District Attorney, who shall be a resident of the district for which he is elected, and who shall hold his office for the term of four years, and until his successor is elected and qualified.

Sec. 14. It shall be the duty of the General Assembly to provide for the carrying into effect of this article, and to provide for a general system of practice in all the courts of this State.⁸¹

The recommendations of the Judicial Committee in regard to dividing the State into eleven judicial districts and giving the General Assembly power to increase or decrease the number of judges every four years were accepted by the Convention and the proposed changes adopted. The Judiciary Committee recommended eleven districts because the districts in the western part of the State were so large that it took a great deal of the judges' time in traveling from one place of holding court to another. To make an additional district would reduce the size of some of these larger districts and thus facilitate the business of the courts. Delegates representing the western counties fought hard to secure even a larger number than eleven judicial districts,

⁸¹ *Journal of the Constitutional Convention of the State of Iowa, 1857*, pp. 224-226.

but were unsuccessful in accomplishing their object and no increase was made at this time.⁸²

Section ten in the final report on the judiciary received two slight amendments by the Convention other than the filling in of the blank left by the Judiciary Committee. In the phrase which reads: "but such increase or diminution shall not be more than one district, or one Judge of either court, at a time," the words "at a time" were changed to "at any one session". Also in the final sentence which read: "Such reorganization of the districts, or increase or diminution of the judges of either court shall take place every four years thereafter, if necessary, and at no other time", the words "or any change in the boundaries thereof," were added following the word "districts". Following the adoption of these amendments the amended Article on the Judiciary was ordered to be engrossed preparatory to a third reading.⁸³

It will be noted that by section nine of this article the salary of Supreme Court judges was set at two thousand dollars per annum, and that of district judges at sixteen hundred dollars per annum. Prior to the submission of the final report of the Judiciary Committee considerable time was spent in Committee of the Whole discussing the proposition as to what should constitute an adequate and sufficient salary for the different judges. At that time it was advocated by some of the most prominent men in the Convention that the minimum salary of Supreme Court judges should be three thousand dollars and that of district judges two thousand five hundred dollars. Some members favored leaving the question of salaries for legislative action while

⁸² *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 628-635.

⁸³ *The Journal of the Constitutional Convention of the State of Iowa, 1857*, pp. 226-229; *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, p. 508.

others thought that it properly belonged to the Committee on Schedule. It was argued by those who favored higher salaries for judges that the existing salaries were insufficient for a judge to maintain a respectable livelihood for himself and his family, and that as a consequence some good judges had been forced to resign their positions. In order that the judicial branch of the government might be maintained on a par with the other branches of government, it would be necessary to attract the best and most capable lawyers to the Supreme and district benches, and in order to do this it would be necessary to give them at least such compensation as would afford them a comfortable living. Further arguments similar to these were advanced by those favoring higher salaries for judges. The majority of the delegates were, however, opposed to high salaries because it meant higher taxes and more complaint on the part of their constituents.⁸⁴ Thus, it happened that the maximum salary for Supreme and district court judges in Iowa was set at two thousand dollars and sixteen hundred dollars respectively.

After the Article on the Judiciary had been ordered engrossed, a resolution was offered by John Edwards which read as follows:

Resolved, That the Committee on Judicial Department be instructed to provide in that Article of the Constitution, for the creation of a Court of Common Pleas, and to report by Monday next.

Immediately thereupon George Gillaspy moved to amend the resolution by adding the following:

And to provide that no person shall be elected District Judge who has not attained the age of fifty years, nor Supreme Judge who has not attained the age of seventy-five years.

⁸⁴ *The Debates of the Constitutional Convention of the State of Iowa, 1857*, Vol. I, pp. 479-494, 504-510.

Both the amendment to the resolution and the resolution were defeated.⁸⁵

The Article on the Judiciary was read a third time on Wednesday evening, March 4th, and passed in substantially the form last reported by the Judiciary Committee.⁸⁶ A few changes in phraseology were made by the Committee on Revision but these were of a minor character.

The Article on the Judiciary as finally adopted by the Constitutional Convention of 1857 differed greatly from that which appeared in the Constitution of 1846. Some of the changes made in the judicial system came as a result of the experiences of the State with its judicial system up to that time. Under the Territorial government the judicial system consisted of a Supreme Court and district courts. The Supreme Court could entertain appeals from the district courts. All sessions of the Supreme Court were held at the seat of the government. The Constitutions of 1844 and 1846 retained in general the same system. Under both of these Constitutions the Supreme Court consisted of a chief justice and two associate justices, all of whom were elected by joint vote of the General Assembly. Each district court consisted of one judge elected by the qualified voters of the district. Provision was also made for the division of the State into three districts under the Constitution of 1844, and four districts under the Constitution of 1846, with the additional provision in both Constitutions that the number of districts might be increased by the General Assembly as the exigencies of the State might require. At a special session of the first State legislature in 1848 it was enacted that "the Supreme Court shall be holden once

⁸⁵ *The Journal of the Constitutional Convention of the State of Iowa, 1857, p. 233.*

⁸⁶ *The Journal of the Constitutional Convention of the State of Iowa, 1857, p. 369.*

a year in each of the judicial districts of the State".⁸⁷ Thus, as was said by a member of the Convention the court was put on wheels and moved about from place to place. In 1853 this plan was completely changed by an act which provided that "the terms of the Supreme Court of this State shall be held at the capitol of the State, and at no other place."⁸⁸

Such was the law when the Constitutional Convention assembled at Iowa City on January 19, 1857. During the intervening period the General Assembly had, however, increased the number of judicial districts with great rapidity. An act approved on January 22, 1857,⁸⁹ created the fourteenth judicial district.

Section ten of the Article on the Judiciary in the new Constitution provided that the State should be divided into eleven judicial districts, but that after 1860 the legislature might reorganize these districts and increase or diminish the number of districts, but not more than one district could be created at any one session of the General Assembly. This section further provided that such reorganization of districts or change in the boundaries thereof, should take place not oftener than once in four years. The object which the Constitution framers had in mind was to diminish the number of districts and to prevent their subsequent increase. A number of delegates favored the establishment of as many as thirteen districts, but these delegates came largely from the western part of the State where large districts existed. It was expected that the evils attending the organization of large districts would be remedied by re-districting the State and increasing the size of the eastern districts.

⁸⁷ *Laws of Iowa*, 1848 (Extra Session), p. 15.

⁸⁸ *Laws of Iowa*, 1852-1853, pp. 139-141.

⁸⁹ *Laws of Iowa*, 1856-1857, pp. 86, 87.

The Constitution of 1846 provided for the election of one prosecuting attorney in each county by the qualified electors, whereas the Constitution of 1857 provided for the election of a district attorney instead of a county attorney. The former was no doubt the best and most satisfactory means of efficiently administering the judicial business of the various counties in the district. This statement is substantiated by the fact that in 1884 an amendment was added to the Constitution striking out the provisions regarding the election of a district attorney, and substituting a provision providing for the election of county attorneys instead.⁹⁰ The Constitution of 1857 also provided for the popular election of an Attorney General, who was to hold his office for a term of two years. No provision had been made for this officer in the Constitution of 1846.

Although the Article on the Judiciary of the Constitution of 1846 was almost entirely rewritten by the Constitutional Convention of 1857, the same general organization was retained throughout. The chief points of difference were that the Constitution of 1857 made Supreme Court judges elective by the people, and provided for the election of an Attorney General by popular vote.

OTHER PROVISIONS OF THE CONSTITUTION OF 1857 RELATING TO THE JUDICIARY

Besides the regular Article on the Judiciary there are a few other provisions in the Constitution of 1857 that are more or less directly connected with the judiciary of the State. In fact one or two of these provisions might well have been included under that portion of the Constitution that provides for the judicial system. For example, turning to section one of the Article on Miscellaneous Provisions, the following statement is found:

⁹⁰ Ramsay's *The Constitution of the State of Iowa and Amendments from 1857 to 1919*, pp. 65, 66.

The jurisdiction of Justices of the Peace shall extend to all civil cases, (except cases in chancery, and cases where the question of title to real estate may arise,) where the amount in controversy does not exceed one hundred dollars and by the consent of parties may be extended to any amount not exceeding three hundred dollars.

While justice of the peace courts were not directly provided for in the Constitution, the power to establish them was given to the General Assembly.⁹¹ The Constitution framers no doubt were confident that the justice of the peace court would be continued, and, although they left it to the General Assembly to establish such inferior courts from time to time as might be necessary, they did not wish to leave it to this body to define the jurisdiction of this particular court. During the consideration of this subject by the Convention, some members wished to extend the civil jurisdiction of the justice courts to cases where the amount in controversy was five hundred dollars. John T. Clark strongly opposed such attempts for to him it was clear that a justice court was not created to decide questions of such great importance. Such an amount in controversy would warrant the parties to subject themselves to the expense of carrying their case to courts better qualified to settle questions of legal importance. He added:

Even if justices of the peace were qualified, and had the requisite learning and ability, they live, as a general thing, in a neighborhood where the disputes, which they are called upon to adjust, originate. The plaintiff in a suit generally goes to a justice of the peace, states his case, not unfrequently takes the advice of the justice in the matter, and enlists his feelings in his behalf before the process is issued. Then, again, the officer who summons the jury in a jury trial, also lives in the neighborhood. He is generally appealed to, and his sympathies are excited, and thus there is a feeling enlisted on his side on the part of the court and jury that are to dispose of the matter.

⁹¹ Constitution of Iowa, Article V, Sec. 1.

H. D. Gibson, who proposed the extension of the civil jurisdiction of the justice of the peace courts, said that the principle implied by Mr. Clark in regard to bribing the jury in a justice court would carry over to the district court as well. It was not his intention to do away with the district court but merely to extend the jurisdiction of the justice court in civil cases and matters of debt. This would make it possible to take a plain note before a justice court, which otherwise might have to be held up until the district court was in session. Then, too, it would be much cheaper to carry a case to a justice court than to the district court.

David Bunker explained that the jurisdiction of the justice court had been limited by the committee because there was not one case in ten decided in a justice court where the amount in controversy exceeded fifty dollars that an appeal was not taken to the district court. This involved the expense of trial before two courts. Thus, after some little discussion the limit of jurisdiction of the justice courts in civil matters was set at one hundred dollars; and in cases where both parties agreed, at three hundred dollars.⁹²

The jurisdiction of justice courts in criminal cases was also defined by the Convention in section eleven of the Article on the Bill of Rights. This section reads:

All offenses less than felony, and in which the punishment does not exceed a fine of one hundred dollars, or imprisonment for thirty days, shall be tried summarily before a Justice of the Peace, or other officer authorized by law, or information under oath, without indictment, or the intervention of a grand jury, saving to the defendant the right of appeal; and no person shall be held to answer for any higher criminal offense, unless on presentment or indictment by a grand jury, except in cases arising in the army or navy, or in the militia, when in actual service, in time of war or public danger.

⁹² *The Debates of the Constitutional Convention of the State of Iowa, 1857, Vol. II, pp. 795-798, 810, 811.*

It was adopted by the Convention of 1857 as a substitute for section eleven of the Bill of Rights in the Constitution of 1846. "No person shall be held to answer for a criminal offence, unless on presentment, or indictment by a grand jury, except in cases cognizable by justices of the peace, or arising in the army or navy, or in the militia when in actual service in time of war or public danger." The object of the substitute was to relieve the district court of a great many cases which could well be taken care of and tried before local magistrates. As a result of this provision many cases have been decided in the local courts which otherwise would have been thrust upon the district court.⁹³

There are a number of other provisions in the Article on the Bill of Rights which might be considered here as being related to the judicial department. The provisions of the Bill of Rights are, however, generally regarded as being limitations upon the power of the General Assembly, although they may be regarded as limitations upon all departments of government.

Section five of the Article on Miscellaneous Provisions provides that "Every person elected or appointed to any office, shall, before entering upon the duties thereof, take an oath or affirmation to support the Constitution of the United States, and of this State, and also an oath of office." This provision while general in its application, bears as strongly upon persons elected to judicial offices, as upon those elected to any office of any other department of the government.

By section twenty of the Article on the Legislative Department of the Constitution, judges of the Supreme and district courts are made responsible for their acts and conduct in office. This section reads :

The Governor, Judges of the Supreme and District Courts, and other State officers, shall be liable to impeachment for any mis-

⁹³ Erbe's *The Bill of Rights in the Iowa Constitution* (A Thesis), pp. 55-58.

demeanor or malfeasance in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit under this State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment according to law. All other civil officers shall be tried for misdemeanors and malfeasance in office, in such manner as the General Assembly may provide.

Under the Article on Schedule, which contains only such provisions as are necessary to complete the organization of government under a new Constitution and which is then no longer in force, there are three sections whose purpose it was to complete the judicial organization under the Constitution of 1857. The first, section three, read as follows: "All indictments, prosecutions, suits, pleas, complaints, process, and other proceedings pending in any of the courts, shall be prosecuted to final judgment and execution; and all appeals, writs of error, certiorari, and injunctions, shall be carried on in the several courts, in the same manner as now provided by law; and all offenses, misdemeanors, and crimes that may have been committed before the taking effect of this Constitution, shall be subject to indictment, trial and punishment, in the same manner as they have been, had not this Constitution been made."

Sections seven and eight of this same article related to the first election of the Attorney General, district judges, district attorneys, judges of the Supreme Court, and other State officers. These provisions from the Article on Schedule, having accomplished the purpose for which they were incorporated in the Constitution of 1857, are no longer operative, although they still appear as a part of that Constitution.

The Constitutional Convention which assembled at Iowa City on January 19, 1857, completed its work on Thursday evening, March 5th. It was not, however, until August 3rd that the Constitution which they had framed was submitted

to the electorate for ratification. It was quite generally believed that the new Constitution would be adopted because of the serious objections to the restrictions placed upon corporations in the old Constitution. The early returns of the election sometimes predicted the adoption of the new Constitution and then its defeat. The final official count, however, showed that the Constitution had been adopted by the small majority of 1460 votes.⁹⁴ On September 3rd of that year, Governor James W. Grimes issued a proclamation declaring that the new Constitution was adopted and that it was the supreme law of the Commonwealth of Iowa.⁹⁵ By this proclamation the judicial system as provided in the Constitution of 1857 supplanted that under which Iowa had been admitted as a member of the Union.

AMENDMENTS TO THE JUDICIAL DEPARTMENT OF GOVERNMENT
SINCE 1857

During the early part of the regular session of the Nineteenth General Assembly which met in January, 1882, Warren S. Dungan introduced a series of amendments to the Constitution, three of which related to the judiciary department.⁹⁶ The second amendment in this series was a proposition to amend section ten of the Article on the Judiciary. This read as follows:

The State shall be divided into eleven Judicial Districts; and after the year eighteen hundred and sixty, the General Assembly may reorganize the Judicial Districts and increase or diminish the number of Districts, or the number of Judges of the said Court, and may increase the number of Judges of the Supreme Court; but such increase or diminution shall not be more than one District, or

⁹⁴ Erbe's *Constitutional Provisions for the Suffrage in Iowa* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XXII, p. 206.

⁹⁵ Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 256, 257.

⁹⁶ *Journal of the House of Representatives*, 1882, pp. 54, 55.

one Judge of either Court, at any one session; and no re-organization of the districts, or diminution of the number of Judges, shall have the effect of removing a Judge from office. Such re-organization of the districts, or any change in the boundaries thereof, or increase or diminution of the number of Judges, shall take place every four years thereafter, if necessary, and at no other time.⁹⁷

The amendment proposed to this section by the Nineteenth General Assembly read:

At any regular session of the General Assembly the State may be divided into the necessary judicial districts for district court purposes, or the said districts may be reorganized and the number of the districts and the judges of the said courts increased or diminished; but no organization of the districts or diminution of the judges shall have the effect of removing a judge from office.⁹⁸

The third proposed amendment in the series was an enlargement of the power vested in the General Assembly by section fourteen of the Article on the Judiciary. This section made it the duty of the General Assembly to provide a general system of practice to be followed by the courts of the State. The amendment here under consideration proposed to enlarge the powers of the General Assembly in this respect by providing that "The grand jury may consist of any number of members not less than five nor more than fifteen, as the general assembly may by law provide, or the general assembly may provide for holding persons to answer for any criminal offense without the intervention of a grand jury."⁹⁹

The fourth proposal in the series was a substitute for section thirteen of the Article on the Judiciary. Section thirteen as incorporated in the Constitution read:

The qualified electors of each judicial district shall, at the time of

⁹⁷ Ramsay's *The Constitution of the State of Iowa and Amendments from 1857 to 1919*, p. 37.

⁹⁸ *Laws of Iowa*, 1882, pp. 180, 181.

⁹⁹ *Laws of Iowa*, 1882, pp. 180, 181.

the election of District Judge, elect a District Attorney, who shall be a resident of the district for which he is elected, and who shall hold his office for the term of four years, and until his successor shall have been elected and qualified.

The proposed substitute provided for the election of a county attorney instead of a district attorney, and as adopted by the Nineteenth General Assembly read:

The qualified electors of each county shall, at the general election in the year 1886, and every two years thereafter, elect a county attorney, who shall be a resident of the county for which he is elected, and who shall hold his office for two years, and until his successor shall have been elected and qualified.¹⁰⁰

These proposed amendments were passed by both houses of the Nineteenth General Assembly and approved by the Governor on March 17, 1882.¹⁰¹ According to the constitutional provision for amendment of the Constitution they were properly published and referred to the Twentieth General Assembly which convened in January, 1884. Here again the amendments received the approval of both houses of the General Assembly and were sanctioned by the chief magistrate on March 29, 1884.¹⁰²

During the period which elapsed between the adoption of the amendments by the Twentieth General Assembly and their submission to the electorate in November, 1884, there was some press comment in regard to their merits, although they did not arouse a great deal of enthusiasm. The *Iowa City Daily Republican* of October 20th, in commenting upon the grand jury amendment prior to the election, said:

If the amendment is adopted, it seems evident that the drift of public sentiment will be towards legislation abolishing the system altogether, and leave it in the hands of committing magistrates and county attorneys to take cognizance of criminal offenses and file

¹⁰⁰ *Laws of Iowa*, 1882, pp. 180, 181.

¹⁰¹ *Laws of Iowa*, 1882, pp. 180, 181.

¹⁰² *Laws of Iowa*, 1884, pp. 234, 235.

informations against offenders. It could certainly be done as well and with far less expense as well as more certainty of meeting the ends of justice than under the present system. The grand jury as now constituted of fifteen men, can find a bill only on the concurrence of twelve of them, so that it often happens that where criminals have money or friends or influence, prosecutions are prevented. The object of law is to do justice and whenever a needless and cumbersome body of men are called to pass upon the innocence or guilt of a supposed criminal you give the person sought to be convicted another opportunity of escaping a deserved punishment. We think the grand jury amendment may be voted for in the interest of justice and good order.

Later in its issue of November 3, 1884, the same paper made the following comment:

If you want to lessen court expenses and make the punishment of crime surer, cheaper, and more expeditious, vote for the amendment allowing a change in the law in regard to grand juries. It simply leaves the whole matter in the discretion of the legislature . . .

If you want to see the State more equally divided into judicial districts, so that the district courts, especially in the western part of the State, shall not be swamped with business, and the trial of cases may be more speedy, vote for the amendment allowing the legislature to re-district the State.

At the general election held on the following day, November 4th, the amendment in regard to re-districting the State carried by a vote of 64,960 for the amendment and 33,868 votes against it. The grand jury amendment was ratified by a vote of 72,591 for it, and 30,343 against it; and the amendment providing for the election of county attorneys instead of district attorneys carried by a vote of 67,621 for it and 32,902 against it.¹⁰³

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¹⁰³ Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 280, 281.

SOME PUBLICATIONS

History of the 151st Field Artillery, Rainbow Division. By Louis L. Collins. Saint Paul: Minnesota War Records Commission. 1924. Pp. 427. Maps, plates. This volume is the second to be published by the Minnesota War Records Commission, the first volume dealing with the part played by Minnesota in the Spanish-American War and the Philippine Insurrection. Lieutenant Governor Collins, the author of the book, was an active participant in many of the events he narrates, and consequently the history of the "Gopher Gunners" is largely source material.

The 151st was a unit of the Minnesota National Guard and as such saw service on the Mexican border; it later became a part of the Rainbow Division in which the 168th Infantry, Iowa's own combat unit in the World War, saw service.

The story of the 151st is told in an interesting way without any striving at effects. In fact the campaigns in which the 42nd or Rainbow Division participated — Lorraine, Champagne, St. Mihiel, Meuse-Argonne for example — require only the presentation of actual conditions in plain narrative to make them arouse emotions.

The volume, carefully edited by Wayne E. Stevens, contains a series of illustrative maps, a list of valuable documents, a roster of the artillery, and a statistical summary. The index is reasonably complete and satisfactory.

History of The Lost State of Franklin. By Samuel Cole Williams. Johnson City, Tennessee: The Watauga Press. 1924. Pp. 371. This volume is the story of one of the most interesting and romantic but more or less obscure episodes in American history. Closely connected with the westward movement from the seaboard, the Indians, the problem of the freedom of the Mississippi River, and the relations between Spain and the English colonists, the State of Franklin experienced a short and stormy career. In addition to

the chapters dealing with the history of Franklin there are chapters on the modes of life, religion, and people in the so-called State and on the travelers through the region during this period. There are also short biographical sketches of the men who favored the organization of the State of Franklin and of the minority who opposed it. The appendix contains *The Constitution of the State of Franklin*, the *Petition of the Inhabitants of the Western Country*, and the *Proceedings of the Convention of 1789*. A bibliography and index are also provided.

The Second Pennamite-Yankee War, an address by Frederic A. Godcharles, is published in the *Proceedings of the Wyoming Commemorative Association* for 1923.

Volume forty-three of the *Archives of Maryland* contains the *Journal and Correspondence of the State Council of Maryland, 1779-1780*, edited by Bernard Christian Steiner.

A third and final volume of *The Slaveholding Indians*, by Annie Heloise Abel, has just appeared. Its specific title is *The American Indian under Reconstruction*.

The April number of *Americana* contains *The Nootka Sound Diplomatic Discussion, August 28 to September 26, 1792*, by Francis E. Smith, and *The State of Franklin*, by Charles A. Shriner.

The Agrarian Movement in North Dakota, a monograph by Paul R. Fossum, appears in a recent number of the *Johns Hopkins University Studies in Historical and Political Science*.

Old Taverns of New York, by W. Harrison Bayles; *Life of General Pickens*, by Miss E. B. Pickens; *Hunting Buffalo in the Early Forties*, by Elizabeth Everitt Russel; *National Spirit in America*; and *The Song of Hiawatha*, by Theodore Coleman, are among the papers in *The Journal of American History* for April-May-June, 1924.

The *Proceedings of the American Antiquarian Society at the Annual Meeting Held in Worcester, October 17, 1923*, contains, in addition to the usual reports, the following papers: *Notes on Rich-*

ard Mather's "*Church Government*," London, 1643, by Thomas J. Holmes; and a continuation of *Letters of Samuel Taggart, Representative in Congress, 1803-1814*.

WESTERN AMERICANA

Mapping the Mississippi Valley, by Louis C. Karpinski, is one of the contributions found in *The Dearborn Independent* for May 2, 1925.

The May issue of *Autumn Leaves* contains a paper by Edward Rannie entitled *How Marcus Whitman Saved Oregon*.

The Wisconsin Archeologist for January contains a *Fifth Addition to the Record of Wisconsin Antiquities*, including the counties with names beginning with the letters from A to M.

Early Bridges in New Mexico, by Lansing B. Bloom, has been published as one of the *Papers of the School of American Research*, issued by the Archaeological Institute of America.

Seventy-five Years of Growth: A Short History of Wisconsin's State University, by J. F. A. Pyre, is one of the articles of historical interest in *The Wisconsin Magazine* for April.

The *Journal of History* for April contains a continuation of *The Church in Omaha*, compiled by Carl T. Self. There are also some shorter articles — *From Missouri History* and *Nauvoo Charter*.

The second part of Alanson Skinner's *Observations on the Ethnology of the Sauk Indians* appears in the *Bulletin of the Public Museum of the City of Milwaukee* for May 11, 1925. This relates to the war customs of this tribe.

Howard White is the author of an extensive monograph, *Executive Influence in Determining Military Policy in the United States*, which has been published in the *University of Illinois Studies in the Social Sciences* for March and June, 1924.

Steamboating on the Missouri River in the 'Sixties, by Charles P. Deatherage, has been printed in pamphlet form. The booklet is a compilation of a series of articles which appeared in *The Kansas City News-Press* in June and July, 1924.

Orral Messmore Robidoux has prepared and published a *Memorial to the Robidoux Brothers: A History of the Robidoux in America*. Joseph Robidoux, for whom St. Joseph, Missouri, was named, was perhaps the best known of the family, but others of the Robidoux family were prominent fur traders along the Missouri River.

Early Bridges in New Mexico, by Lansing B. Bloom, appears in *El Palacio* for April 15, 1925. The number for May 1st includes a premium list prepared for the fourth annual southwest Indian fair to be held at Santa Fe, N. M., on August 6-8, 1925. *Pecos Excavations in 1924* and *Navajo Blankets*, by A. F. Spiegelberg, appear in the issue for June 1, 1925.

IOWANA

The Land of Black Hawk and Keokuk is one of the contributions in *The Northwestern Bell* for May, 1925.

An interesting account of life in Davis County, Iowa, is presented in *Pages from Bygone Days In and About Drakeville*, by George W. Clarke, reprinted from the *Annals of Iowa* for July, 1924. The descriptions of pioneer activities are unusually good.

The *Annals of Iowa* for October, 1924, contains a collection of newspaper articles entitled "*A Wolverine among the Hawk-Eyes and other Scraps, & Productions, written by D. Rorer at Various Times*." Other articles in this number are: *A Map of the Half Breed Tract*, by Edgar R. Harlan; and *Decree in Partition of the Half Breed Tract in Lee County, Iowa, 1840*, rendered by Chief Justice Charles Mason of the Territorial Supreme Court of Iowa. The January, 1925, issue contains a reprint of the rare and interesting *Sketches of Iowa and Wisconsin, Taken During a Residence of Three Years in Those Territories*, by John Plumbe, Jr. This was originally printed in 1839 and included a map which is also reproduced. In addition there is *A Pioneer Medicine Man of Iowa*, by Charles Keyes, and *A Wartime Doctor's Account Book, 1861-1862*, by Charles J. Fulton.

SOME RECENT PUBLICATIONS BY IOWA AUTHORS

Anderson, Maxwell, (Joint author)

What Price Glory?

Ansley, C. F.,

Raymond Weeks (The Midland, May 1, 1925).

Baldwin, Bird T.,

Weight-Height-Age Standards in Metric Units for American-Born Children (American Journal of Physical Anthropology, January-March, 1925).

Baldwin, W. W.,

A Market Basket Dollar or Bi-Monthly Variable Dollar — Some Objections (Chicago Daily News, February, 1925).

Barrett, Clark,

Ten Years' Supply of Gasoline, What Next? (The Transit, May, 1925).

Bascos, Pedro B.,

Experience (The Iowa Liberal, May, 1925).

Betts, George Herbert, (Joint author)

Method in Teaching Religion. New York: Abingdon Press. 1925.

Bose, Sudhindra,

Give Us Straight History (The Modern Review, March, 1925).

Briggs, John Ely,

When Iowa Was Young (The Palimpsest, April, 1925).

Brookhart, Smith W.,

Cooperative Economics (The Iowa Liberal, May, 1925).

Brown, Charles R.,

Ten Short Stories from the Bible. New York: Century Company. 1925.

Brueckner, Leo J.,

The Use of Free Activity Periods in Determining Errors in Oral Speech (The Journal of Educational Method, February, 1925).

The Value of a Time Analysis of Classroom Activity as a Supervising Technique (The Elementary School Journal, March, 1925).

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What Is the Use of Going to Europe? (Midland Schools, April, 1925).

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Orange Township Consolidated School, Black Hawk County, Iowa. Washington: Bureau of Education, Department of the Interior. 1925.

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As Others See Us (Bulletin of the Johnson County League of Women Voters, March, 1925).

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In Honor of the Flag (The Palimpsest, May, 1925).

Eyre, J. R.,

New Iowa City Power Line (The Transit, May, 1925).

Erbe, Carl H.,

The Legislative Department as Provided by the Constitution of Iowa (The Iowa Journal of History and Politics, April, 1925).

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A Challenge to the Faculty (The Iowa Liberal, May, 1925).

Fulton, C. J.,

The Beginnings of Education in Iowa (The Iowa Journal of History and Politics, April, 1925).

Garretson, O. A.,

A Lincoln Pole Raising (The Palimpsest, April, 1925).

Glock, Waldo,

All On a Rainy Day (The Iowa Magazine, March 26, 1925).

Hall, James Norman,

Forgotten One (Atlantic Monthly, March, 1925).

Memoir of a Laundry Slip (Harper's Monthly Magazine, April, 1925).

Snow-bound (Atlantic Monthly, April, 1925).

Harris, Paul P.,

A Sentimental Journey Through Hoosierdom (The Vermont Alumni Weekly, April 15, 1925. Reprinted from The Rotarian.)

Haynes, Fred Emory,

What Is Crime Today? (The Independent, March 21, 28, April 4, 1925).

Holbrook, Weare,

Let's Help the Kiddies (The Nation, April 29, 1925).

Holt, Edgar A.,

A Voyage of the Omaha (The Palimpsest, April, 1925).

Hoover, Herbert,

The Diffusion of Property Ownership (Proceedings of the Academy of Political Science in the City of New York, April, 1925).

Howe, J. H.,

Observations on Railroad Engineering (The Transit, May, 1925).

Hunter, William L.,

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Ibershoff, C. H.,

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Into the Jaws of Death (U. S. Air Service, March, 1925).

Jones, Henry Craig,

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Kantor, MacKinlay,

Lyman Dillon and His Plow (Overland Monthly, April, 1925; Des Moines Register, May 24, 1925).

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Economic Psychology and the Value Problem (Quarterly Journal of Economics, May, 1925).

Fact and Metaphysics in Economic Psychology (The American Economic Review, June, 1925).

On Socialism (The Iowa Liberal, May, 1925).

Laidler, Harry W.,

The L. I. D. (The Iowa Liberal, May, 1925).

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Mineral Production in Iowa in 1921 and 1922 (Iowa Geological Survey, Vol. XXX, 1921 and 1922).
- Laird, Donald A.,
Relative Performance of College Students as Conditioned by Time of Day and Day of Week (Journal of Experimental Psychology, February, 1925).
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- Norton, William Harmon,
The American College in Recent Fiction (School and Society, March, 1925).
- Patrick, George Thomas White,
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SOME RECENT HISTORICAL ITEMS IN IOWA NEWSPAPERS

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The story of an ex-slave, by Sarah Toubes, in the *Des Moines Register*, March 18, 1925.

The good old days in Ringgold County, by Isaac W. Keller, in the *Mount Ayr Record-News*, March 18, 1925.

Old Fort Atkinson, by Harry Wilkinson, in the *Decorah Journal*, March 18, 1925.

The story of Spillville, by Harry Wilkinson, in the *Decorah Journal*, March 18, 1925.

- St. Anthony's Chapel, the smallest church in the world, by Harry Wilkinson, in the *Decorah Journal*, March 18, 1925.
- A rare collection of old books, in the *Muscatine Journal*, March 18, 1925.
- A blizzard in pioneer days, in the *Emmetsburg Democrat*, March 18, 1925.
- Reminiscences of Abraham Lincoln, in the *Decorah Republican*, March 19, 1925.
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- The Ethell family as pioneers, by Henry C. Ethell, in the *Bloomfield Democrat*, March 19, 1925.
- Early Iowa history in a New York paper of 1839, in the *Guthrie Center Guthrian*, March 19, 1925.
- Sketch of the life of Rebecca Price, Herbert Hoover's Quaker aunt, in the *Cherokee Times*, March 25, 1925.
- Sketch of the life of Margaret Forbes Beatty, one hundred year old pioneer, in the *Keosauqua Barometer*, March 26, 1925.
- A brief outline of Iowa history, in the *Burlington Hawk-Eye*, March 29, 1925.
- The naming of Burlington, in the *Burlington Hawk-Eye*, March 29, 1925.
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- An old log cabin, in the *Waterloo Courier*, March 31, 1925.
- Sketch of the life of Christina Uthe, one hundred and four year old pioneer, in the *Independence Conservative*, April 1, 1925.
- Sketch of the life of Robert E. Ridley, founder of Estherville, in the *Estherville Enterprise*, April 1, 1925.
- Indian mounds and caves near Bellevue, in the *Bellevue Leader*, April 2, 1925.

Sketch of the war career of Captain Fred S. Washburn, in the *Waterloo Courier*, April 2, 1925.

Indian pottery and bones found in burial cave at Cascade, in the *Cedar Rapids Gazette*, April 1, 1925, the *Mt. Vernon Record*, April 1, 8, 1925, the *Dubuque Telegraph-Herald*, April 2, 1925, the *Mt. Vernon Hawk-Eye*, April 9, 1925, the *Maquoketa Excelsior*, April 14, 1925, and the *Iowa City Press-Citizen*, April 15, 1925.

Early days in Dexter, by Josephine Lenocker, in the *Dexter Sentinel*, April 2, 1925.

The story of my pioneer grandmother, by Helen Johnson, in the *Orient Independent*, April 2, 1925.

Civil war reminiscences, by John Kennedy, in the *Greeley Press*, April 2, 1925.

Sketch of the life of Judge Joseph R. Reed, in the *Council Bluffs Nonpareil*, April 5, 1925.

Navigation above the Falls of St. Anthony, by Fred A. Bill, in the *Burlington Post*, April 4, 11, 18, 25, and May 9, 1925.

History of Cedar Rapids, by Fred J. Lazell, in the *Cedar Rapids Republican*, April 5, 1925.

Early days near Mason City, in the *Mason City Gazette*, April 6, 1925.

Archaeological remains uncovered at Adel, in the *Des Moines Register*, April 7, 1925, and the *Adel Record*, April 8, 1925.

Memories of Civil War days, in the *Washington Journal*, April 7, 1925.

How Estherville was founded and named, by Mrs. Rufus D. Soper, in the *Estherville Democrat*, April 8, 1925.

The capture of Jefferson Davis, in the *Cedar Rapids Gazette*, April 8, 1925.

Politics in Bedford thirty-one years ago, in the *Bedford Free Press*, April 9, 1925.

How Dubuque celebrated the end of the Civil War, in the *Dubuque Times-Journal*, April 12, 1925.

A rare old law book in the Columbia College library, in the *Dubuque Times-Journal*, April 12, 1925, and the *Des Moines Register*, April 26, 1925.

Early days in Keokuk, in the *Keokuk Gate City*, April 13, 1925.

A soldier of the Revolutionary War buried in Iowa, in the *Signourney Review*, April 15, 1925.

Memories of slavery days, in the *Mt. Pleasant Weekly News*, April 15, 1925.

The Indian executions at Mankato, in the *Algona Republican*, April 15, 19, 1925.

A bill of sale for a slave girl, in the *Winterset News*, April 15, 1925.

Some early history of Poweshiek County, in the *Montezuma Republican*, April 16, 1925.

When Winfield was a wheatfield, in the *Winfield Beacon*, April 16, 1925.

Sketch of the life of Dr. Asa Bosworth Bowen, a pioneer physician, in the *Maquoketa Excelsior*, April 17, 1925.

An Indian battle in northern Iowa, in the *Ft. Dodge Messenger*, and the *Creston Advertiser*, April 18, 1925.

The love letters of Governor Robert Lucas, in the *Des Moines Register*, April 19, 1925.

A relic of Sac County pioneer days, in the *Sac City Sun*, April 23, 1925.

Reminiscences of a pioneer, in the *Chariton Leader*, April 28, 1925.

Sketch of the life of Lydia Biggs, an Iowa Falls pioneer, in the *Iowa Falls Sentinel*, April 29, 1925.

Sketch of the life of Colonel E. H. Burke, survivor of the Custer massacre, in the *Greene Record*, April 29, 1925.

Adam Ritchie, the first white settler in Washington County, by Bessie Williams Howell, in the *Washington Democrat*, April 29, 1925.

Reminiscences of Moses Johnson, ninety-five year old pioneer, by Mrs. R. C. Tyson, in the *Council Bluffs Nonpareil*, April 30, 1925.

How the name Hawkeye was given to Iowans, in the *Atlantic News*, the *Ft. Dodge Messenger*, the *Mason City Gazette*, and the *Coon Rapids Enterprise*, May 1, 1925.

Site of the first pioneer home in Waterloo marked by the D. A. R., in the *Waterloo Courier*, May 5, 1925.

Discovery of the Adel stone axes, by James H. Lees, in the *Adel News*, May 6, 1925.

Sketch of the life of Mrs. S. A. Irish, an Iowa pioneer, in the *Davenport Democrat*, May 11, 1925.

Stage coach days recalled, in the *Fairfield Ledger*, May 14, 1925.

An old atlas of Iowa, in the *Williamsburg Journal*, May 14, 1925.

Sketch of the life of D. B. Cowles, Iowa G. A. R. chief, in the *Ottumwa Courier*, May 15, 1925.

Dubuque forty years ago, in the *Dubuque Times-Journal*, May 17, 1925.

Early history of Cedar Rapids, in the *Cedar Rapids Gazette*, May 23, 1925.

Old home of Antoine LeClaire restored, in the *Burlington Post*, May 23, 1925, the *Davenport Democrat and Leader*, May 24, 1925, and the *Davenport Times*, May 25, 1925.

Reminiscences of an old soldier, by Mrs. W. S. Brown, in the *Glenwood Opinion*, May 28, 1925.

When Robert E. Lee was in Iowa, in the *Des Moines Register*, May 31, 1925.

The burying places of pioneers, in the *Legrand Reporter*, May 31, 1925.

HISTORICAL SOCIETIES

PUBLICATIONS

Wax Portraiture, by A. J. Wall, appears in *The New-York Historical Society Quarterly Bulletin* for April.

Volume seventy-three of the *Massachusetts Historical Society Collections* is volume two of the *Warren-Adams Letters*, covering the years 1778-1814.

An Indian Captive's Picture of Early Detroit, from a narrative by Oliver M. Spencer, is the chief contribution to the *Burton Historical Collection Leaflet* for May, 1925.

The Ohio State Archaeological and Historical Society has recently published in two volumes the *Diary and Letters of Rutherford Birchard Hayes*, edited by Charles Richard Williams.

Letters of William Smith, Minister to Portugal; and *The Spanish Settlement at Port Royal, 1565-1586*, by A. S. Salley, Jr., are two articles in *The South Carolina Historical and Genealogical Magazine* for January.

The House of Roger Williams, by Norman M. Isham, and a continuation of *The Inscribed Rocks of Narragansett Bay*, by Edmund B. Delabarre, are two of the articles in the April issue of the *Rhode Island Historical Society Collections*.

The Historic Sites and Monuments Board of Canada, a paper by Dr. James H. Coyne; *Old Fort Niagara*, by Peter A. Porter; and *Suffern's Tavern*, by George A. Blauvelt, are three contributions in the April number of *The Quarterly Journal of the New York State Historical Association*.

Handbook of County Records Deposited with the North Carolina Historical Commission has been published as Bulletin No. 32 of the *Publications of the North Carolina Historical Commission*.

The Palestine Colony in Michigan, by Gabriel Davidson, and *The Jews of North Carolina Prior to 1800*, by Leon Huhner, are two papers of interest to State history students which appear in the *Publications of the American Jewish Historical Society*, No. 29.

Finmark in British Diplomacy, 1836-1855, by Paul Knaplund; *The Reichstadt Agreement*, by George H. Rupp; and *The Progress of Constitutional Theory, 1776-1787*, by Edward S. Corwin, are the three articles in the April number of *The American Historical Review*.

The *Journal of the Presbyterian Historical Society* for April contains a second installment of *The Influence of the Presbyterian Church in Early American History*, by Henry D. Funk.

The April number of *The Virginia Magazine of History and Biography* contains the first installment of *The Proprietors of the Northern Neck, Chapters of Culpeper Genealogy*, by Fairfax Harrison.

Anti-Catholic Parties in American Politics (1776-1860), by Paul J. Foik, and *The Trappists of Monks Mound*, by G. J. Garraghan, are articles of general historical interest in the March issue of *Records of the American Catholic Historical Society of Philadelphia*.

The Virginia War History Commission has published a second source volume entitled *Virginia War History in Newspaper Clippings*, edited by Arthur Kyle Davis. This is an index volume for the newspaper clippings collected by the Commission.

California Emigrant Roads Through Texas, by Mabelle Eppard Martin; *The Office of Adjutant General in Texas, 1835-1881*, by Clarence P. Denman, and continuations of *The Federal Indian Policy in Texas, 1845-1860*, by Lena Clara Koch; and *The Bryan-Hayes Correspondence*, edited by E. W. Winkler, are the four contributions in the *Southwestern Historical Quarterly* for April.

The North Carolina Historical Review for April, 1925, contains three papers: *The Prison Experiences of Randolph Shotwell*, by J. G. de Roulhac Hamilton; *The Farmers' Alliance in North Caro-*

lina, by John D. Hicks; *An Address to the Inhabitants of North Carolina*, by William Borden, which is the second installment of *Some North Carolina Tracts of the 18th Century*, edited by William K. Boyd.

Account of the Second Voyage and the Death of Father Jacques Marquette, by Claude J. Dablon; *Chicagou — The Grand Chief of the Illinois*, by Joseph J. Thompson; *History in the Press*, by Teresa L. Maher; and a continuation of *Two Hundred and Fiftieth Anniversary History of Illinois*, by Joseph J. Thompson, are among the articles in the April number of the *Illinois Catholic Historical Review*.

The *Minnesota History Bulletin* with the March number becomes *Minnesota History*. It will be published quarterly. The form is very similar to that of the *Bulletin* though the cover design has been changed. The March issue contains the following articles: *The Minnesota Lumberjacks*, by Wright T. Orcutt; *The 1925 Annual Meeting of the Minnesota Historical Society*; *Minnesota in 1849*; *An Imaginary Letter*, by William W. Folwell; *Radiograms of Minnesota History*; and *Minnesota as Seen by Travelers*.

The *Ohio Archaeological and Historical Quarterly* for October, 1924, contains the following papers and articles: *Exploration of the Wright Group of Pre-Historic Earthworks*, by H. C. Shetrone; *The History of Penal Institutions in Ohio to 1850*, by Clara Belle Hicks; *Western Opinion and the War of 1812*, by John F. Cady; *Significance of Memorials*, by W. O. Thompson; *Dedication of Monument to George Rogers Clark*; *Funeral of Adam Willis Wagnalls*; and *Buffalo Child Long Lance Visits Ohio*.

The April number of the *Chronicles of Oklahoma* contains the following articles: *Battle of the Washita*, by Paul Nesbitt; *Journal of the General Council of the Indian Territory*; *Oklahoma as a Part of the Spanish Dominion, 1763-1803*, by Anna Lewis; *My Experience with the Cheyenne Indians*, by Henry C. Keeling; and *Early Days in Payne County*, by E. Bee Guthrey.

A Rare Dutch Document Concerning the Province of Pennsylvania in the Seventeenth Century, by Daniel B. Shumway, is an

interesting paper in the April number of *The Pennsylvania Magazine of History and Biography*. *Random Recollections of "Hans Breitmann"*—Charles Godfrey Leland, by Edward Robins, is another article in this number.

Army Chaplains; Green River Early History; Reminiscences of the Early Days of Douglas, by Bert Wagner; and *Carbon County Copper*, by J. C. Kennedy, are some of the contributions in the *Quarterly Bulletin of the Historical Department of Wyoming*. The July number of this publication is to begin the use of a new title, *Annals of Wyoming*.

The March issue of the *Indiana History Bulletin* contains a roster of historical societies in Indiana and their officers. The number for April contains *Suggestions for the Small Museum*, by E. Y. Guernsey; *The New Harmony Museum*, by Nora C. Fretageot; and *The Open Door Museum*, by A. D. Babcock. There are also reports of various other local museums and historical societies. In the issue for May there is a report of the ten years work of the Indiana Historical Commission.

The April-June issue of *Nebraska History and Record of Pioneer Days* contains, among others, the following contributions: *Hymn to Nebraska*, by William H. Buss; *The Plum Creek Railroad Attack 1867*; *Elijah Filley, Leader in Improved Farming*, by H. Clyde Filley; *The Stone Grave People of Nebraska and Kansas*; *Quakers and Nebraska Indians in 1869*; *The Mormon Trail Across Nebraska*; and *Marking Pioneer Trails in Washington County* by D. A. R., by Grace Ballard.

The January number of *The Register of the Kentucky State Historical Society* contains *Logan County Tax Lists — 1795*, from the State archives; *Kentucky Officers in the Regular Army, 1789–1900*, compiled by A. C. Quisenberry; and a continuation of *Early Political Papers of Governor James Turner Morehead*, with an introduction by Willard Rouse Jillson. The issue for May contains the *Madison County Tax Lists, 1792*; *A Partial List of Those at Fort Boonesborough*, compiled by Mrs. James Caperton; *The Downfall of the Whig Party in Kentucky*, by E. Merlton Coulter; and *The*

Texas Movement in Kentucky (1820-1836), by Willard Rouse Jillson.

The April number of *The Missouri Historical Review* contains a number of interesting articles among which are the following: *Little Visits with Literary Missourians — Fanny Hurst*, by Catharine Cranmer; *The Building of a City — Springfield*, by A. M. Haswell; *Norman J. Colman*, by Floyd G. Summers; *In the Land of the Osages — Harmony Mission*, by Mrs. W. W. Graves; *Personal Recollections of Distinguished Missourians — B. Gratz Brown*, by Daniel M. Grissom; *The New Journalism in Missouri*, by Walter B. Stevens; and an installment of *Shelby's Expedition to Mexico*, by John M. Edwards.

The April number of the *Michigan History Magazine* contains the following articles and papers: *Indian Legend of the Plum Orchard*, by Charles E. Belknap; *The Chippewa Cession of Mackinac Island to George III, May 12, 1781*, by L. Oughtred Woltz; *The Naming of Charles T. Foster Post, G. A. R.*, by Seymour Foster; *Fort Gratiot Turnpike*, by William L. Jenks; *The Michigan Women in New York, Inc.*, by Mrs. Gerson C. Coblens; *Leigh Wade, Aviator*, by Charles O. Harmon; *The Alger Movement of 1888*, by Henry A. Haigh; *A Bit of Benzie History*, by William L. Case; and a continuation of *Winter Scenes in Early Michigan*, from Hoffman's *A Winter in the West*.

The Lincoln Inquiry, by Bess V. Ehrmann; *Henry Robertson, the Father of Benton County and Incidents of Parish Grove*, an address by Elmore Barce; *The Cattle Industry of Benton County*, by Sherman N. Geary; *Historic Homes of Salem and Vicinity — 1814-1860*, by Martha Sayles Hobbs; *The First Pioneer Schools of Highland*, by Lillie D. Trueblood; *General Charles Scott and His March to Ouiatenon*, by J. W. Whickear, and *Zachariah Cicot*, by J. Wesley Whickear, are the papers and addresses in the *Indiana Magazine of History* for March. The number also includes the stenographic report of a trip through local historical sites under the guidance of Elmore Barce and J. W. Whickear, and *Lincoln*, a poem by Albion Fellows Bacon.

A Case in Admiralty in Louisiana 1741 Before Salmon, J., by Henry P. Dart; *Documents Relating to Alexandro O'Reilly and an Expedition Sent Out by Him from New Orleans to Natchitoches, 1769-1770*, by David B. Bjork; *Louisiana Troops at the Occupation of Havana*, by John S. Kendall; *Reminiscences of the Chevallier Bernard de Verges, an Early Colonial Engineer of Louisiana*, by George C. H. Kernion; *The New Orleans Bi-Centennial Medallion*, by Andre Lafargue; and *West Feliciana*, by Louise Butler, are some of the papers in the *Louisiana Historical Quarterly* for January, 1924.

The Lakes of Oregon, by Lewis A. McArthur; *Some Additional Notes Upon Captain Colnett and the "Princess Royal"*, by F. W. Howay; and *Narrative of the Expedition to the Kootanae and Flat Bow Indian Countries, on the Sources of the Columbia River, Pacific Ocean*, by D. Thompson on Behalf of the N. W. Company 1807, with an introduction by T. C. Elliott, are the chief contributions to the March number of *The Quarterly of the Oregon Historical Society*.

Old Fort Colville, a continuation of an article by J. Orin Oliphant; *Information Concerning the Establishment of Fort Colville*, by William S. Lewis; *Vancouver's Centennial*, by Edmond S. Meany; *Captain Simon Metcalfe and the Brig "Eleanor"*, by F. W. Howay; *Members of the Seattle Bar Who Died Young*, by C. H. Hanford; *The North-West Tribune*, by J. Orin Oliphant; and *The Beaver*, taken from the *Victoria Gazette*, are the chief contributions to *The Washington Historical Quarterly* for April. There is a continuation of the *Diary of Wilkes in the Northwest*.

The April number of the *Western Pennsylvania Historical Magazine* contains the following papers and articles: *Washington Crossing*; *Address of Dr. George P. Donehoo at the Dedication of the Washington Crossing Bridge, Pittsburgh, Pa., December 29th, 1924*; *Hon. Walter Forward*, by Robert M. Ewing; *History of the Eighteenth Regiment, Duquesne Greys, Period 1878 to 1917*, by Albert J. Logan; *Albert Gallatin of Western Pennsylvania*, by Carman C. Johnson; and a continuation of the *Origin of the Names Given to the Counties in Pennsylvania*, by James McKirdy.

An extensive biography, *Life of Stephen Arnold Douglas*, by Frank E. Stevens, has been published in a double number of the *Journal of the Illinois State Historical Society* for October, 1923-January, 1924. This covers some four hundred and thirty pages of text and includes numerous portraits and pictures of persons and places connected with the life of Stephen A. Douglas. The footnote references are somewhat indefinite. The biography, however, is a valuable contribution to the political history of the United States, and its style is interesting and clear. Indeed it is a question whether so extensive and interesting a biography should not have been issued as a separate volume instead of as a number in a periodical where it will be bound with other numbers and consequently may be less easily found by the general readers.

The *Transactions of the Illinois State Historical Society* for 1924 is in three parts — part one containing the reports of the annual meeting held at Springfield on May 22 and 23, 1924, part two papers read at the meeting, and part three contributions to State history. Among the papers and articles are the following: *Early Mineral Explorations in the Mississippi Valley*, by Willard Rouse Jillson; *The Early History of Monticello Seminary*, by Harriet Rice Congdon; *Old Time Camp Meetings in Central Illinois*, by John H. Ryan; *Two Forgotten Heroes of the Illinois Country*, by William M. Gemmill; *The Mansion House of Cahokia and Its Builder — Nicholas Jarrot*, by Margaret E. Babb; *Harnessing the Illinois Waterways in Pioneer Days*, by Charles B. Johnson; *John Locke Scripps, Lincoln's Campaign Biographer*, by Grace Locke Scripps Dyche; *An Episode of the Civil War, a Romance of Coincidence*, by Josephine Craven Chandler; *The Ancestry of Abraham Lincoln*, by William E. Barton; and *The House of the House Divided*, by Henry A. Converse.

Volume twelve of the *South Dakota Historical Collections* contains an account of the eleventh biennial meeting of the State Historical Society at Pierre on January 17, 1923. This was largely a memorial service in honor of Leonard Charles Mead. The volume also contains an account of the presentation to the State of portraits of Dr. Joseph Ward and Dr. Frederick Angier Spafford. In

connection with the latter ceremony Doane Robinson gave an address on *The Medical Adventures of Lewis and Clark*. Other papers and addresses are the following: *Sac-a-jawe vs. Sa-kaka-wea, South Dakota and the War of 1812, Some Functions of a Historical Society, The Value of History, The Pioneers, Old South Dakota Trails, The Education of Redcloud, Before the Settlers Came, Black Hills Bygones, The Earliest Days in Sully, Buffalo County, Lyman County, Early Days in Potter County, Divorce in Dakota, and A Century of Liquor Legislation in Dakota*, all by Doane Robinson; *The Scandinavian Pioneers of South Dakota*, by G. Bie Ravndal; *The Initiative and Referendum in South Dakota*, by Burton Ellsworth Tiffany; *Studies in the History of Public Education in South Dakota*, by Walter W. Ludeman; and *The Struggle of South Dakota to Become a State*, by Carrol Gardner Green.

ACTIVITIES

The Historical Society of Wisconsin has issued the proceedings of the seventy-second annual meeting of the Society, held at Madison, on October 16, 1924.

The Ohio State Archaeological and Historical Society has received for preservation the silver service formerly belonging to the battleship *Ohio*, launched May 18, 1901.

The Scott County Historical Society is collecting statistics and photographs with a view to the compilation of a county honor roll.

The Jefferson County Historical Society met on April 15, 1925, at Fairfield. A feature of the program was a paper by Dr. T. L. James on the Isle of Pines.

The annual meeting of the Madison County Historical Society was held at Madison on April 28, 1925. Miss May Francis, State Superintendent of Public Instruction, gave the chief address. G. W. Samson also gave a short talk. A paper, by Judge W. L. Lewis, on "Hogs, Corn and Corn Cribs of Long Ago" was read and Mrs. Charity Lothrop Kellogg and Miss Orpha Adkinson presented reminiscences. H. A. Mueller was reelected president and Mrs. Jean Scott secretary.

The Howard County Historical Society held a monthly meeting on April 13, 1925. A paper, "The Early Schools of New Oregon and Cresco", written by Mrs. Ella Mead Dissmore, was read by Miss Lauraine Mead. The Society is continuing the construction of the log cabin on the fair grounds.

The Chicago Historical Society held an Appomattox Day program on April 9, 1925. Addresses were given by James A. James, William L. Libberton, James E. Stuart, Joseph M. James, and Preston Bradley. Selected articles from the Society's Civil War collections were displayed in honor of the occasion.

By the will of the late Delavan Smith, the Indiana Historical Society receives a bequest of \$131,000 and a library of some ten thousand volumes. This is to establish and maintain The William Henry Smith Memorial Library, which will be located in the World War Memorial Building to be erected by Indiana.

The Minnesota War Records Commission has issued in pamphlet form their third biennial report for the years 1923 and 1924, with brief reviews of the activities during the two preceding biennial periods. The most important publication of the Commission was the *History of the 151st Field Artillery, Rainbow Division*. Work has also been begun on a three-volume roster of Minnesota service men and on a history of the Minnesota units in the 34th (Sandstorm) Division.

The eighteenth annual meeting of the Mississippi Valley Historical Association was held at Detroit and Ann Arbor on Thursday, Friday, and Saturday, April 30, and May 1, 2, 1925. Headquarters was at the Hotel Statler, already famed for its service. The program committee and the committee on local arrangements had prepared a session in which scholarly papers were supplemented by lunches, dinners, and visits to places of interest in and near the city. The afternoon session on Thursday was held at the Detroit Public Library, following which an opportunity was given the visitors to inspect this civic center and the extensive Burton Collection. On Friday morning the session was held in the beautiful Clements Library at Ann Arbor. The hospitalities included a

dinner on Thursday evening at the Statler given by the Detroit Historical Society and State and local patriotic societies, a dinner on Friday evening tendered by the College of the City of Detroit at the College building, and a trip to the Rouge River Ford factory and museum where the visitors were the guests of Henry Ford. The papers were of high grade at every session, one of the outstanding contributions being "The Significance of the Latest Third Party Movement" by Dr. Fred E. Haynes of the State University of Iowa. Officers elected for the next year were: president, James A. Woodburn; secretary-treasurer, Mrs. Clara S. Paine; members of the executive committee, Joseph Schafer, Otto Schmidt, and John D. Hicks. Dr. Benj. F. Shambaugh, Miss Ethyl E. Martin, and Mr. Bruce E. Mahan represented the State Historical Society of Iowa at this meeting.

THE STATE HISTORICAL SOCIETY OF IOWA

The series of radio talks on topics in Iowa history given from Station WSUI every Friday noon during the past semester by members of the staff of the State Historical Society were brought to a close with interesting discussions—"Amana: the Community of True Inspiration", by Mrs. Bertha M. H. Shambaugh, and "The Old Stone Capitol", by Dr. Benj. F. Shambaugh.

The State Historical Society of Iowa now has ready for publication a history of the 168th Infantry, Iowa's contribution to the Rainbow Division. This was prepared by John H. Taber, a former lieutenant, under the direction of the committee selected by the 168th Infantry Association. More than two and a half years were spent by the author in the preparation of this history which is unusually vivid and interesting. The work will appear in two volumes and will include a roster of members of the regiment, as well as numerous illustrations. These volumes will be distributed to members of the regiment and their immediate relatives at the actual cost of printing and binding.

Dr. C. F. Kellogg of Clinton has donated to the State Historical Society a sawed-off musket which was a part of a consignment of arms sent to Iowa City for transportation to Kansas by John

Brown. The muskets were seized by a group of pro-slavery men who so bent the barrels that they were useless. Later the bent portion of the barrel of this gun was sawed off and the musket was used to shoot buffalo and elk. The gun is marked by the United States coat of arms and the words Harpers Ferry, indicating that it had been made by the government.

The following persons have recently been elected to membership in the Society: Rev. Frank Barry, West Liberty, Iowa; Mr. Paul H. Huston, Cedar Rapids, Iowa; Mrs. E. M. Jennings, Centerville, Iowa; Mr. Max Katz, Osage, Iowa; Mr. V. H. Lovejoy, Jefferson, Iowa; Mr. J. H. Peet, Anamosa, Iowa; Mr. Charles T. Rogers, Grundy Center, Iowa; Mr. F. D. Wisdom, Bedford, Iowa; Mr. R. S. Galer, Mt. Pleasant, Iowa; Mr. H. O. Hendrickson, Mt. Pleasant, Iowa; Mr. Owen Hourihanm, Salem, Iowa; Mrs. John A. Reed, Humboldt, Iowa; Mr. J. L. Swift, North English, Iowa; Mr. W. R. Bruce, Glenwood, Iowa; Mr. Oral S. Swift, Iowa City, Iowa; and Mr. F. R. White, Ames, Iowa.

NOTES AND COMMENT

A regional meeting of the American Library Association, including Missouri, Iowa, Minnesota, North and South Dakota, and Nebraska, will be held at Sioux City on October 14-16, 1925.

A ceremony which marks the passing of the years was the disbanding of the Grand Army Post at Waukon in April, 1925. Only five Civil War veterans remained to surrender the charter of the John J. Stillman Post. The flag was presented to the American Legion.

The Creston chapter of the D. A. R. have placed a sign pointing to the old Mormon settlement at Mt. Pisgah which is located off the main highway about three miles northeast of Talmage. A monument has been erected by the Mormons in honor of the eighty or more who died during the winter spent at this camp.

The Iowa League of Women Voters held its fifth annual convention at Des Moines on April 13 and 14, 1925. An address by Senator A. B. Cummins on the World Court, one by Dr. Benj. F. Shambaugh on international coöperation to prevent war, and one by Mr. Harvey Ingham on national insecurity and national defense were features of the program.

The Indiana legislature has transferred the Land Department and the custody and care of the Nancy Hanks Lincoln Burial Ground, the Tippecanoe Battle Ground, and the Capital Square and Old Capitol building at Corydon from the office of the Auditor of State to the Department of Conservation.

On Saturday, May 24, 1925, the old Antoine LeClaire home and the first depot west of the Mississippi River was dedicated as an historical memorial by the citizens of Davenport, members of the D. A. R. and other patriotic and fraternal societies, officials of the Rock Island railroad, and representatives of local historical societies, and the Historical, Memorial, and Art Department of Iowa.

One of the features of the dedication was a pageant, arranged by Mrs. Ruth Irish Preston, in which the story of the development of early Iowa was depicted in eight episodes.

The thirteenth biennial of the Iowa Federation of Women's Clubs was held at Des Moines on May 19-22, 1925. The Iowa History and Landmarks Committee, of which Mrs. H. C. Houghton was chairman, was in charge of the program held on the afternoon of May 22nd at which Dr. Benj. F. Shambaugh of the State Historical Society of Iowa presided. Talks were given by Henry DeLong of Council Bluffs, representing the pioneers, by Frances Clark, representing the prize winners in the essay contest on Iowa history held last year under the joint auspices of the Federation and the State Historical Society of Iowa, and by Edgar R. Harlan, Curator of the Historical Department. Mrs. John Fox Lake of Shenandoah was chosen president for the ensuing biennium; Mrs. W. H. Milchrist of Sioux City, vice president; Mrs. W. E. G. Saunders of Emmetsburg, recording secretary; and Mrs. Henry C. Taylor of Bloomfield, director.

HERBERT QUICK

Herbert Quick, well known Iowa author, died at Columbia, Missouri, on May 10, 1925. He was born near Steamboat Rock, Grundy County, Iowa, on October 23, 1861. He was a school principal at Mason City and was later admitted to the bar, practising law at Sioux City, and from 1898 to 1900 he served as mayor of Sioux City. In addition he was associate editor of *La Follette's Weekly*, and editor of *Farm and Fireside* from 1909 to 1916. During the administration of Woodrow Wilson Mr. Quick served on the Federal Farm Loan Board. He is best known, however, for his work as a novelist. His last and probably his best books are the trilogy recently completed covering almost the entire period of Iowa history: *Vandemark's Folly*, *The Hawkeye*, and *The Invisible Woman*.

CONTRIBUTORS

CHARLES REUBEN KEYES, Professor in Cornell College, Mt. Vernon, Iowa. Received Ph. B. degree from Cornell College in 1894, the M. A. degree from Harvard University in 1898, and the Ph. D. degree from Harvard University in 1923. Attended the universities of Munich and Berlin, 1912-1913. Author of numerous articles on scientific and literary subjects.

FRANK LUTHER MOTT, Assistant Professor of English, State University of Iowa. Received Ph. B. degree from the University of Chicago in 1907. Ten years of experience in newspaper work in Iowa and Oklahoma. Received the degree of M. A. from Columbia University in 1919. Professor of English at Simpson 1919-1921. Editor of *The Midland* and author of a number of short stories and articles.

CARL HERMAN ERBE, Assistant Professor at the Iowa State Teachers College, Cedar Falls, Iowa. (See *THE IOWA JOURNAL OF HISTORY AND POLITICS* for April, 1924, p. 319, and April, 1925, p. 336.)

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THE LEGISLATION OF THE FORTY-FIRST GENERAL ASSEMBLY OF IOWA

In accordance with the provisions of the State Constitution the Forty-first General Assembly of Iowa convened at the Capitol in Des Moines on January 12, 1925.¹ Friday, April 3rd, was designated as the date of adjournment, but due to a tangle in the passage of the appropriations law the actual adjournment did not occur until April 10th.² The Forty-first General Assembly was thus in session eighty-nine days — one of the shortest regular sessions in recent years. The Thirty-third General Assembly in 1909, and the Thirty-ninth General Assembly in 1921 were each in session only eighty-nine days, but all other sessions since 1909 have consumed a longer period of time — the Fortieth General Assembly in 1923 having been in session one hundred days. Although eighty-nine days elapsed between the convening and the adjournment of the Forty-first General Assembly, both houses were actually in session only sixty-nine days. Besides the twelve Sundays and the customary spring recess, which was taken from February 26th to March 3rd inclusive, the legislature also recessed on January 16th, 17th, and 19th. On the basis of the number of days actually in session, the members of this session of the legislature received approximately \$14.50 per day for their services.³

¹ *Constitution of Iowa*, Art. III, Sec. 2; *House Journal*, 1925, p. 1.

² The clocks were stopped on April 3rd and official records of adjournment bear that date.—*House Journal*, 1925, p. 1448; *The Des Moines Register*, April 11, 1925.

³ THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XXI, p. 507; *House Journal*, 1925, pp. 98, 99, 459, 460.

During this session seven hundred and thirty-six bills and eleven joint resolutions were introduced — three hundred and thirty bills and four joint resolutions in the Senate, and four hundred and six bills and seven joint resolutions in the House. Two hundred and eighty-four of these measures were enacted into law. One hundred and four of the bills thus acted upon were introduced by individual Representatives and fifty-three originated in committees of the House — a total of one hundred and fifty-seven originating in the House. Of the one hundred and twenty-seven measures which originated in the Senate, ninety-eight were introduced by individual members and twenty-nine by various committees. Judiciary Committee No. 2 in the House introduced the largest number of bills that were finally adopted — twelve of its bills being enacted into law. The House Committee on Motor Vehicles and the Senate Committee on Claims each presented eight of the measures adopted. The individual members who secured the passage of the largest number of laws introduced by them were as follows: in the Senate, William J. Goodwin ten, Bertel M. Stoddard nine, Charles J. Fulton and E. W. Romkey seven each, and F. C. Gilchrist six bills and one joint resolution; in the House, L. B. Forsling seven, and L. V. Carter, Volney Diltz, Wm. H. Stepanek, and Joseph Wagner six each.⁴

It will be remembered that at the time of the compilation of the *Code of 1924* there was considerable discussion as to whether or not it should be adopted as the official code of the State and what its status would be if it were not. On the one hand it was contended that unless it should be adopted as a whole, it would not carry with it the force and effect of law. Opponents of the formal adoption of the new

⁴ *Index and History of Senate and House Bills and Joint Resolutions, 1925*, pp. 4-6.

Code, however, argued that if it were enacted as a single measure it would incorporate into the codified law a large number of errors, which must inevitably have crept in during the process of recodification.⁵ In the light of this discussion it is interesting to note that almost sixty per cent of all the measures adopted by the Forty-first General Assembly—the first session after the publication of the Code—were passed for the purpose of amending various sections of the Code. Moreover, if appropriation bills, legalizing acts, and joint resolutions are excluded more than eighty per cent of all other bills were amendatory.⁶

ELECTIONS

There are three methods by which one wishing to become a candidate for an office in Iowa may secure a place on the official ballot—the primary election, the convention, and the petition. The law relative to the two latter methods was revised and codified by the Forty-first General Assembly. This law is the result of a measure introduced by the House Judiciary Committee No. 2 and provides that any convention or caucus of qualified electors representing a political organization which is not a political party as defined by law may make one nomination of a candidate for each office to be filled at the general election. Nominations made under the provisions of this law shall be certified by the chairman and secretary of the convention, setting forth the name and residence of each candidate, the office to which he is nominated, the name of the political organization making the nomination, and the name and address of each member of the organization's executive or central committee. Provision is also made for filling vacancies.

⁵ *Iowa Law Bulletin*, Vol. X, p. 11; *THE IOWA JOURNAL OF HISTORY AND POLITICS*, Vol. XXIII, p. 74.

⁶ Of the 216 measures, not including appropriation acts, legalizing acts, and joint resolutions, 172 were amendatory.

Certificates of nomination for State, congressional, judicial, and legislative offices are to be filed with the Secretary of State, those for all other offices, except for cities and towns, with the county auditor, and those for cities and towns with the clerk of the city or town. All such certificates must be filed within a time limit, which varies with the different offices. Objections to the legal sufficiency of a certificate of nomination or to the eligibility of a candidate may be filed by any person who would have a right to vote for a candidate for the office in question. Such objections must be filed with the officer with whom such certificate is filed within a specified time limit, varying with the various offices. If objections are filed a hearing must be held before the Secretary of State, the county auditor, or the mayor as the case may be.

Provision is also made whereby a person nominated under the provision of this law may withdraw his nomination by a written request, signed and acknowledged by him, and filed within a specified time limit with the officer with whom the certificate of nomination is filed.

Nomination by petition may be made, in case of State officers, by a petition signed by not less than five hundred qualified voters; for county and district offices, by a petition signed by twenty-five qualified voters; and in case of city or town officers by a petition signed by not less than ten qualified voters of such city or town. The time and place of filing nomination petitions, the presumption of their validity, the right of a candidate so nominated to withdraw and the effect of such withdrawal, and the right to object to the legal sufficiency of such petitions or to the eligibility of the candidate are to be governed by the law relating to nominations by political organizations which are not political parties.⁷

⁷ *Acts of the Forty-first General Assembly, Ch. 27.*

The election law, prior to the time of its re-codification, provided that withdrawals which were filed with the county auditor must be in his office twenty days before the date of election. In re-codifying the law this provision was adopted without alteration, but before this measure was finally approved by the Governor, Representative E. P. Harrison of Pottawattamie County had introduced a measure to change the time from twenty to twenty-five days. This change was later adopted.⁸

Two measures passed by the Forty-first General Assembly were for the purpose of regulating the hours during which polling places shall be open on election days. The law with regard to general elections previously required that the polls should be closed at seven o'clock in the evening. According to an amendment the "polling places" are to be closed at the time stated, but all persons who are entitled to vote and who are within said polling places at the time of closing are permitted to vote. The bill providing for this amendment was introduced by Representative John T. Hansen of Scott County.⁹

The second measure, relative to school elections, provides that in all school districts in which registration of voters is required the polls shall open at seven o'clock in the morning and close at seven in the evening. In districts where registration is not required, but which are composed in whole or in part of cities or towns, or in consolidated districts, the polls shall be open from twelve o'clock, noon, until seven in the evening; while in rural independent districts the polls shall open at one o'clock in the afternoon and remain open not less than two hours. Formerly the law provided that in districts where registration is not required the polls should be open five hours, and in rural

⁸ *Acts of the Forty-first General Assembly*, Ch. 23.

⁹ *Acts of the Forty-first General Assembly*, Ch. 24.

independent districts they should be open at least two hours. The time of opening was not specified in either case.¹⁰

The lack of uniformity in arrangement and the crowding of names on the ballots used in voting machines led the Forty-first General Assembly to pass a law requiring the officer in charge of preparing the ballots for voting machines to lock and leave blank the party row next underneath the names of the Republican candidates and also the party row underneath the names of the Democrats. This tends to uniformity and provides a blank space beneath the names of all candidates of the two major parties.¹¹

Several other measures relative to elections were introduced in the Forty-first General Assembly, but none of these were enacted into laws. Four of these bills, however, passed one house and caused considerable discussion on the floor in both House and Senate.

One of these was an attempt to amend the Iowa primary election law which requires a candidate, to secure a nomination, to receive thirty-five per cent of the votes cast for his office. A bill providing that this stipulation be stricken out of the law was introduced by Senator O. E. Gunderson and passed the Senate by a vote of 28 to 22, but was indefinitely postponed in the House.¹²

An attempt was also made to amend the law relative to the marking of absent voters' ballots to permit the officer administering the oath to such voter to mark the ballot as directed by said voter if for any reason except intoxication the voter is unable to read or to mark his ballot. The bill providing for this change in the law passed the House, but did not come to a vote in the Senate.¹³

¹⁰ *Acts of the Forty-first General Assembly*, Ch. 26; *Code of 1924*, Sec. 4202.

¹¹ *Acts of the Forty-first General Assembly*, Ch. 25.

¹² Senate File No. 61.

¹³ House File No. 137.

It is the duty of the county auditor prior to the day of election to publish in two newspapers of the county a list of the nominees to be voted upon at the election. A bill was introduced providing that this list should not be published in two papers in the same city or town unless the population of the municipality exceeded twenty-five hundred. Although this measure passed the House by a vote of 60 to 5 it was not voted upon by the Senate. The passage of such a measure would tend to secure a wider distribution of nomination lists.¹⁴

The primary election law provides that the names of candidates for city ward aldermen, city precinct committeemen, and delegates to the city convention shall not be printed on the primary ballot, but blanks are reserved for them. A bill to amend the law so as to remove ward aldermen from this list was introduced by Representative Joseph Wagner of Davenport,¹⁵ and passed the House by a vote of 65 to 2, but was not voted upon in the Senate.

THE STATE ADMINISTRATION

The legislation of the Forty-first General Assembly resulted in a number of significant changes relative to State administration, two of which affected directly the Board of Accountancy. The *Code of 1924* provided that the Governor should appoint three persons as a Board of Accountancy, each member to serve for three years. The law, however, did not provide for reappointments. The Forty-first General Assembly authorized the Governor, on or before July first of each year, commencing with 1926, to appoint one member to serve on this board, and provided that the originally appointed members should hold office until July first of the year in which their respective terms of office

¹⁴ House File No. 388; *Code of 1924*, Sec. 790.

¹⁵ House File No. 329; *Code of 1924*, Sec. 643.

would expire. The effect of this law is to make the Board of Accountancy a continuing body.¹⁶

Under the provisions of the former law the Board of Accountancy was required to make a report biennially. In order to make it conform with Section 247 of the Code, this law was amended to require annual reports.¹⁷

Prior to 1925 the law of Iowa provided that whenever a crime punishable by death or imprisonment in the penitentiary for a period of ten years or more had been committed within the State, and the person committing the offense had escaped from arrest, the Governor, in his discretion, might offer a reward of not more than five hundred dollars for the arrest and return of such offender. The Forty-first General Assembly adopted a bill presented by Senator H. Guy Roberts which amended this law to permit the offering of the reward in cases where the custody or whereabouts of the accused is unknown as well as in cases where the accused has escaped from arrest.¹⁸

The Auditor of State, prior to 1925, was required to compile a complete biennial report of the expenditures of the several State offices and State institutions, except for institutions under the management of the State Board of Control and the State Board of Education, and it was the duty of the several offices, departments, and institutions to furnish to the Auditor such information as he might need in compiling this data. A bill introduced by Representative T. L. Wolfe and approved on April 3, 1925, repealed this law. This change was probably brought about as a result of the law which makes it the duty of the Director of the Budget to supervise expenditures.¹⁹

¹⁶ *Acts of the Forty-first General Assembly*, Ch. 40; *Code of 1924*, Sec. 1886.

¹⁷ *Acts of the Forty-first General Assembly*, Ch. 41.

¹⁸ *Acts of the Forty-first General Assembly*, Ch. 21.

¹⁹ *Acts of the Forty-first General Assembly*, Ch. 2; *Code of 1924*, Secs. 127, 128, 232, 246.

The *Code of 1924* provides that an accountant of the Executive Council shall examine and report to the Council upon all financial affairs of the State Fair Board. A law of the Forty-first General Assembly transfers this duty to the Director of the Budget, but provides that the report shall be included in the biennial expense report of the Auditor of State. This provision, however, is of no effect for, as noted above, a law was passed on April 3rd which relieves the Auditor of the duty of issuing this biennial report. Accordingly no legal provision remains for the publication of the report of the financial affairs of the State Fair Board.²⁰

Two measures were passed relative to inter-State bridges. The first of these, introduced by Representative Ralph C. Prichard, provides that the Governor of Iowa be directed to appoint three commissioners from this State to act with a similar commission appointed by the Governor of Nebraska to ascertain and report upon the feasibility of constructing a bridge on the Missouri River connecting the State of Iowa through Woodbury County with the State of Nebraska through Dakota County and also to report concerning a like bridge between Pottawattamie County, Iowa, and Douglas County, Nebraska. A similar commission, also to be appointed by the Governor, was provided to confer with a commission from Wisconsin relative to bridging the Mississippi River connecting the State of Iowa "through Clayton county with the state of Wisconsin through Crawford county".²¹ To make the provision of the law more general and to allow the commission a wider range of discretion in the matter, Representative J. H. Hager of Allamakee County introduced another bill amending the first which provided that the commission report

²⁰ *Code of 1924*, Sec. 2891; *Acts of the Forty-first General Assembly*, Ch. 57.

²¹ *Acts of the Forty-first General Assembly*, Ch. 209.

upon the feasibility of constructing "interstate bridges across the Mississippi river joining the state of Iowa with the state of Wisconsin." This was adopted and thus the location of such bridge or bridges across the Mississippi is not restricted to the limits of certain counties. The restrictions remain, however, with regard to bridges crossing the Missouri.²²

All claims for money due from the State, to be paid from the State treasury, except salaries of the various officers and employees, must be approved and certified by the State Board of Audit. Prior to 1925 claims were not audited and therefore could not be collected if presented after the lapse of two years from the date of accrual. A bill introduced by Senator F. C. Stanley and approved on March 31, 1925, reduced this time limit to six months instead of two years, thus requiring more prompt action on the part of persons having claims against the State. This law also provides that the Auditor of State shall transfer to the general fund of the State any unexpended balance of any annual or biennial appropriation remaining at the expiration of six months after the close of the fiscal period for which the appropriation was made. At the time the transfer is made on the books of his office he shall certify such fact to the Treasurer of the State, who shall make corresponding entries on the books of the Treasurer's office.²³

On January 15, 1925, three days after the convening of the legislative session, Representatives Earl W. Vincent of Guthrie County and A. G. Rassler of Pocahontas County introduced a bill authorizing the Executive Council to rent suitable office space in the city of Des Moines in order to provide more adequate rooms for State officials and thus facilitate the work of State government. An annual appro-

²² *Acts of the Forty-first General Assembly*, Ch. 210.

²³ *Acts of the Forty-first General Assembly*, Ch. 205; *Code of 1924*, Sec. 393.

priation of ten thousand dollars was provided for carrying this act into effect. Although this measure passed the House by a unanimous vote of 84 to 0, it met strong opposition in the Senate. The committee to which it was referred offered an amendment reducing the appropriation to five thousand dollars, and suggested that the question of passage be referred to the Committee on Appropriations. This committee recommended indefinite postponement. The report of the committee was adopted and the measure was lost.²⁴

LEGISLATURE

The passage of the Nineteenth Amendment to the Federal Constitution, by making women citizens voters, at once extended to women the right to hold many of the governmental offices from which they had hitherto been excluded. The Constitution of Iowa provides, however, that only male citizens shall be members of the General Assembly. The Fortieth General Assembly in 1923 passed a joint resolution providing for a constitutional amendment, removing this sex qualification for membership in the State legislature. Constitutional amendments, however, to become effective must be passed by two successive sessions of the General Assembly. Accordingly the proposed amendment was presented to the Forty-first General Assembly in the form of a joint resolution introduced by Representative S. L. Graham. This measure was adopted by a unanimous vote in both houses and if it is favorably voted upon by the people, it will become a part of the Constitution of Iowa.²⁵

Another constitutional amendment relative to the apportionment of the State into State senatorial districts was presented to the Forty-first General Assembly by Senator

²⁴ House File No. 1; *Senate Journal*, 1925, pp. 748, 749, 818.

²⁵ *Acts of the Forty-first General Assembly*, Ch. 282; *Constitution of Iowa*, Art. III, Sec. 4.

F. C. Gilchrist. The present law provides that the Senate shall be composed of fifty members to be elected from the several senatorial districts, and apportioned among the several counties or districts of the State according to population. The purpose of the proposed amendment is to prevent the division of a county into two senatorial districts, and to prevent a county from having more than one Senator. In accordance with the provisions of the Iowa Constitution this proposal will have to be acted on by the Forty-second General Assembly, and submitted to a vote of the people before it becomes effective.²⁶

The *Code of 1924* provided that the compensation of the officers and employees of the General Assembly shall be fixed by joint action of the House and Senate by resolution at the opening of the session, or as soon thereafter as convenient. Accordingly Representative John M. Rankin introduced a joint resolution fixing the compensation of the officers and employees of the Forty-first General Assembly. The salaries stipulated in this measure were substantially the same as those paid during previous sessions of the legislature.²⁷

Extra help being needed to carry on the work of the Assembly another joint resolution, presented by Senator Frank Shane, was passed approving the appointment of additional employees and stipulating the compensation to be paid in each case. This was very similar to that paid at the preceding regular session.²⁸

The Constitution of Iowa provides that the Lieutenant Governor, while presiding in the Senate, shall receive as

²⁶ *Acts of the Forty-first General Assembly*, Ch. 279; *Constitution of Iowa*, Art. III, Sec. 34 as amended in 1904.

²⁷ *Acts of the Thirty-eighth General Assembly*, Ch. 4; *Acts of the Forty-first General Assembly*, Ch. 283; *Code of 1924*, Sec. 19.

²⁸ *Acts of the Fortieth General Assembly*, Ch. 386; *Acts of the Forty-first General Assembly*, Ch. 280.

compensation the same mileage and double the per diem pay which is allowed Senators, but no such provision was made with regard to the Speaker of the House of Representatives. Custom has dictated, however, that the presiding officer of the House shall, in like manner, receive a salary equal to twice that of the other members. Since 1911 the salary of the members of the General Assembly has been one thousand dollars for each regular session and it has been customary for the legislature at each session to appropriate the sum of one thousand dollars to the Speaker, in addition to his pay as a member. The *Code of 1924* provides that compensation of the members of the General Assembly shall be one thousand dollars for each regular session, and a per diem payment for special sessions. A measure introduced in the Forty-first General Assembly by Senator Bertel M. Stoddard provides that this law shall not apply to the President of the Senate, nor to the Speaker of the House; but that these shall each receive a salary equal to twice that of other members.

The passage of this measure brings about a uniformity and standardization of the law, which has hitherto been lacking. The constitutional provision relative to the President of the Senate and the custom relative to the Speaker of the House are now made uniform by legislative enactment.²⁹

One of the problems presented in connection with the work of legislation is the publication of legislative acts. It is not strange, therefore, that several measures were passed relative to this matter. The *Code of 1924* provides that acts which are to take effect from and after publication in newspapers shall be published in two or more papers, one at least of them at the seat of government. A measure was

²⁹ *Constitution of Iowa*, Art. IV, Sec. 15; *Acts of the Thirty-fourth General Assembly*, Chs. 1, 192, Sec. 6; *Acts of the Forty-first General Assembly*, Ch. 18; *Code of 1924*, Sec. 14.

introduced in the Forty-first General Assembly by Senator Charles J. Fulton by which the last clause of this provision was stricken out. Under the present law, therefore, newspapers located in Des Moines have no preference in the publication of legislative acts.³⁰

The Reporter of the Supreme Court, in accordance with the provision of the *Code of 1924*, is designated as Code Editor. One of his duties in this connection has been to "prepare the manuscript copy of all laws, acts, and joint resolutions passed at each session of the general assembly, and arrange the same in chapters with a comprehensive index". This duty has now been transferred to the Superintendent of Printing who is charged with the preparation of session laws. The Code Editor, however, is still authorized to submit recommendations for changing conflicting sections of the Code, to edit and compile the Code after each even-numbered session of the General Assembly, to edit and prepare annotations, and to prepare every four years a volume which will show the construction placed by the Supreme Court of the State and the Federal courts upon statutes of the State.³¹

Prior to 1924 codes and session laws were distributed through the offices of the county auditors. With the adoption of the new Code in that year the work of such distribution was transferred to the Superintendent of Printing. It appears, however, that some of the county auditors retained copies of publications which should have been forwarded to the Printing Department. In order to effect this transfer, the Forty-first General Assembly passed a bill which provided that all county auditors be directed to ship to the Superintendent of Printing, all codes of 1897, all supplements thereto, and all session laws now in their

³⁰ *Code of 1924*, Sec. 54; *Acts of the Forty-first General Assembly*, Ch. 3.

³¹ *Code of 1924*, Secs. 156, 162, 163, 165, 166; *Acts of the Forty-first General Assembly*, Ch. 19.

possession and unsold or undistributed. Thus the custody and distribution of codes and session laws, as well as the preparation of session laws is now in the hands of the Superintendent of Printing.³²

It has formerly been the duty of the Printing Board to fix the price to be charged for the Code, session laws, annotations, table of corresponding sections, and reports of the Supreme Court. The Forty-first General Assembly fixed the price of these publications as follows:

1. Codes: Five dollars (\$5.00) within the state and seven dollars and fifty cents (\$7.50) outside the state.
2. Session laws: One dollar (\$1.00) within the state and one dollar and fifty cents (\$1.50) outside the state.
3. Book of annotations to the code: Four dollars (\$4.00) within the state and six dollars (\$6.00) outside the state.
4. Tables of corresponding sections of the codes: Two dollars (\$2.00) within the state and four dollars (\$4.00) outside the state.
5. Reports of the supreme court: Three dollars and fifty cents (\$3.50) within the state and five dollars (\$5.00) outside the state.³³

An attempt was made to amend the law relative to the compensation to be paid newspapers for publishing the laws of the General Assembly which take effect by publication. A bill providing that the rates charged be the same as those paid for legal advertisements, instead of one-third of that rate, as the present law provides, was presented in the Senate and passed by a unanimous vote of 32 to 0, but when the measure was sent to the House, the bill was defeated by striking out the enacting clause.³⁴

JUDICIARY

Three measures passed by the Forty-first General Assembly concerned the district court, two of which increased

³² *Acts of the Forty-first General Assembly*, Ch. 215.

³³ *Acts of the Forty-first General Assembly*, Ch. 20; *Code of 1924*, Sec. 265.

³⁴ Senate File No. 45; *Code of 1924*, Sec. 62.

the number of district judges. The Ninth Judicial District, composed of Polk County, formerly had five judges. A bill, introduced by Representative Volney Diltz, provided a sixth judge for this district and authorized the Governor to appoint a judge to fill the newly created office until January, 1927 — provision being made for the election of his successor at the general election in 1926. This bill was adopted.³⁵

In like manner the Sixteenth Judicial District, consisting of Ida, Sac, Calhoun, Crawford, Carroll, and Greene counties, was given an additional judge, the number being increased from two to three. Representative Marion R. McCaulley of Calhoun County introduced the bill which resulted in this change.³⁶ Prior to 1925 the State of Iowa was divided into twenty-one judicial districts, with sixty-seven judges, each district having from two to five judges. Under the new law the number of districts remains the same, but the number of judges is increased to sixty-nine, there now being from two to six judges in each district.

The third measure passed relative to the district courts was one relating to the salaries and expenses of judges. When from any cause, the business of the district court of any judicial district of the State can not be disposed of within a reasonable time by the judges elected within that district, the Chief Justice of the Supreme Court, upon petition, may temporarily assign additional judges from other districts to assist with the hearing of cases. The judge so transferred shall be allowed all reasonable and actual expenses while in the performance of his temporary duties, in addition to his salary. The recent legislation on this point provides that vouchers for such expenses shall

³⁵ *Acts of the Forty-first General Assembly*, Ch. 200; *Code of 1924*, Sec. 10768.

³⁶ *Acts of the Forty-first General Assembly*, Ch. 201.

be filed with the Auditor of State, and that he be authorized to draw warrants for the amount due. An appropriation was made sufficient to carry out the provisions of this act until July 1, 1925.³⁷

The Constitution of Iowa provides that the compensation of Supreme Court judges shall be such as the General Assembly may by law prescribe, but that the salary of such judges shall not be increased or diminished during the term for which they shall have been elected. The statutory salary for some years prior to 1925 has been six thousand dollars. An act was approved on April 3rd of this year, however, which provides that each "judge of the supreme court hereafter elected shall receive a salary of seventy-five hundred dollars (\$7,500.00) a year, as provided by law."³⁸

The *Code of 1924* contains a provision that no person shall be eligible to the office of judge of a court of record who is not, at the time of his election, an attorney at law, duly admitted to practice under the laws of this State. Senator Frank Shane of Ottumwa introduced a measure which resulted in amending this section in such a manner as to make judges of police courts an exception to this rule. Accordingly, under the present law, a judge of a police court in Iowa need not be an attorney at law.³⁹

STATE INSTITUTIONS

Institutions under the Board of Control.— Two measures relative to escapes from State institutions were passed by the legislature. The *Code of 1924* contains a provision for the punishment of persons who escape from the Peniten-

³⁷ *Acts of the Forty-first General Assembly*, Ch. 202; *Code of 1924*, Secs. 10785, 10786.

³⁸ *Acts of the Forty-first General Assembly*, Ch. 194; *Acts of the Fortieth General Assembly*, Ch. 334, Sec. 10.

³⁹ *Code of 1924*, Sec. 10815; *Acts of the Forty-first General Assembly*, Ch. 195.

tiary or from the Men's or Women's Reformatory. Section 13355 of the Code provides that all costs and fees hereafter incurred in the prosecution of such cases shall be paid out of the general fund of the State treasury in any case where the prosecution fails, or where such fees and costs can not be collected from the person liable, the facts being certified by the clerk of the district court and verified by the county attorney. This section appears in the Code with a restrictive clause, however, which makes the provision relative to the payment of costs applicable only in cases of escapes from the Penitentiary. Under the present law costs are paid in case of escapes from the Reformatories in like manner as in case of escapes from the Penitentiary.⁴⁰

The second measure passed relative to escapes was intended to consolidate and codify in a more simple form the law upon this subject. Sections 13365, 13369, and 13370 of the Code all deal with the offense of aiding escapes, each of these sections being in part a repetition of the others. By the recent legislation these three sections are codified as a single section, which provides that any person not authorized by law who shall bring or cause to be brought into any institution under the management of the Board of Control, "any opium, morphine, cocaine, or other narcotics, or any intoxicating liquor, or any firearm, weapon, or explosive of any kind, or any rope, ladder, or other instrument or device for use in making or attempting an escape, or shall in any manner aid in such an escape, or who, knowing of such escape, shall conceal such inmate after escape, shall be punished by fine not exceeding one thousand dollars, or imprisonment in the penitentiary or reformatory for a term not exceeding five years."⁴¹

⁴⁰ *Code of 1924*, Secs. 13351, 13355; *Acts of the Forty-first General Assembly*, Ch. 71.

⁴¹ *Acts of the Forty-first General Assembly*, Ch. 72.

Under the provisions of the law as it existed before 1925 the power of paroling inmates of the Women's Reformatory was vested in the Board of Control, while inmates of the Penitentiary and of the Men's Reformatory were paroled by authority of the Board of Parole. A bill introduced by Senator A. T. Brookins and approved by the Governor on March 25, 1925, repealed the authority of the Board of Control in this regard and transferred its power to the Board of Parole. The passage of this measure resulted in the repeal of two sections of the Code and amended seventeen other sections. The amendments, however, to the several sections were slight—the only purpose being to secure uniformity in the law as amended. One section of the former law, for example, provided that: "The board of parole shall . . . have power to parole persons convicted of crime and committed to either the penitentiary or the men's reformatory." The new law specifies that the Board of Parole may parole prisoners committed to "the penitentiary or the men's or women's reformatory." Similar adjustments were made in the other sections amended.⁴²

It is the duty of the Board of Control to make monthly visits to the State Hospitals for the Insane, and to make a thorough examination of existing conditions. The Board may, however, at its discretion, delegate this duty to a woman inspector who shall be required to make a written report to the Board. According to legislation passed by the Forty-first General Assembly this visitation and inspection may also be done by the secretary of the Board.⁴³

The law relative to the management and control of the Soldiers' Home stipulates that the Board of Control shall determine the eligibility of all applicants for admission to the home. A measure passed by the recent session of the

⁴² *Acts of the Forty-first General Assembly*, Ch. 67.

⁴³ *Acts of the Forty-first General Assembly*, Ch. 68; *Code of 1924*, Sec. 3494.

legislature adds to this law the following provision: "but no person shall be received or retained in said home who has been dishonorably discharged from said military or naval service." The obvious purpose of this amendment was to prevent dishonorably discharged veterans from obtaining support at the Soldiers' Home.⁴⁴

A bill designed to regulate and control the marriage of persons mentally deficient was passed by the Forty-first General Assembly. This bill, which required certain reports from the Board of Control, was a part of the legislative program presented by the Child Welfare Commission and is considered under the subject of Social Legislation.⁴⁵

Another measure, of a temporary nature, which affected the control of State institutions, provided that "For the remaining portion of the biennium ending June 30, 1925, all monthly appropriations made for the support of the various institutions under the control and management of the board of control of state institutions shall be construed as available on the first day of each current month". In accordance with this provision those sections of the Code relative to maximum and minimum appropriations for the Iowa Juvenile Home and the Iowa Soldiers' Orphans' Home were declared to be repealed after June 30, 1925. The purpose of this measure was to make regulations such as would conform with the provisions of the Budget Law which would become effective July 1, 1925.⁴⁶

Educational Institutions.—The lack of housing facilities at the three State institutions under the management of the Board of Education has given rise to an agitation for the building of dormitories at State expense. In further-

⁴⁴ *Acts of the Forty-first General Assembly*, Ch. 73; *Code of 1924*, Sec. 3367.

⁴⁵ *Acts of the Forty-first General Assembly*, Ch. 187.

⁴⁶ *Acts of the Forty-first General Assembly*, Ch. 69.

ance of this plan Senator George M. Clearman introduced a measure by which the Board of Education has been given authority to erect from time to time such dormitories as may be required for the good of the institutions, to rent rooms to students, and to exercise full control and management over such dormitories. For this purpose the Board may purchase or condemn property for a building site. It may also borrow money, mortgage any of the property so acquired, and pledge the rents, profits, and income from any such property. Provision is made, however, that no obligation for such property shall become a charge against the State, but that all such obligations, including principal and interest, shall be payable from rents, profits, and incomes, and from gifts and bequests made to the institutions for dormitory purposes.⁴⁷

There has developed in recent years a belief that there exists a duplication of work at the various State educational institutions. With a view of eliminating this duplication Senator H. Guy Roberts introduced a joint resolution which authorized the State Board of Education to make a careful study of existing conditions at the three State educational institutions, to provide for the elimination of unnecessary courses of study, and on or before July 1, 1926, to report in detail to the Governor of the State the action taken. This bill was adopted.⁴⁸

APPROPRIATIONS

One of the most important functions of a State legislature is the granting of appropriations to carry forward the activities of State government. The budget system recently adopted in Iowa is designed not only to facilitate the work of the legislators but to place appropriations upon a more

⁴⁷ *Acts of the Forty-first General Assembly*, Ch. 93.

⁴⁸ *Acts of the Forty-first General Assembly*, Ch. 281.

scientific basis. The budget as presented to the Forty-first General Assembly was in a very large measure adopted as presented. Nevertheless, much time was consumed in discussing appropriations and several changes resulted.

In the accompanying table an attempt has been made to classify the appropriations of the Forty-first General Assembly under the headings: (1) Appropriations for the Maintenance of State Government and State Officers; (2) Support and Maintenance of State Institutions; (3) Appropriations to Satisfy Claims; (4) Improvement of State Property; and (5) Appropriations for Miscellaneous Purposes.

APPROPRIATIONS BY THE FORTY-FIRST GENERAL ASSEMBLY			
FOR THE MAINTENANCE OF STATE GOVERNMENT AND STATE OFFICERS			
CHAPTER	FOR WHAT	AMOUNT	PERIOD
218	Department of Adjutant General	\$492,740	Biennium
218	Department of Agriculture	932,040	Biennium
218	Department of Justice	171,700	Biennium
218	Board of Audit	7,600	Biennium
218	Auditor of State	52,800	Biennium
218	Bacteriological Laboratory	29,110	Biennium
218	Director of the Budget	64,400	Biennium
218	Clerk of the Supreme Court	19,300	Biennium
218	Board of Conservation	180,000	Biennium
218	Office of Board of Control	167,040	Biennium
218	Office of Custodian	134,910	Biennium
218	District Court Judges	605,000	Biennium
218	Board of Education	81,400	Biennium
218	State Entomologist	12,040	Biennium

CHAPTER	FOR WHAT	AMOUNT	PERIOD
218	Executive Council	\$ 40,360	Biennium
218	Executive Council, general expense	435,500	Biennium
218	State Fair Board	41,200	Biennium
218	Agricultural societies	320,000	Biennium
218	State Fire Marshal	34,000	Biennium
218	Grand Army of the Republic	1,500	Biennium
218	Geological Survey	19,600	Biennium
218	Office of Governor	38,000	Biennium
218	Department of Health	122,820	Biennium
218	Historical Department	94,850	Biennium
218	State Historical Society	72,850	Biennium
218	Iowa Industrial Commission	55,000	Biennium
218	Department of Insurance	108,700	Biennium
218	Bureau of Labor	44,400	Biennium
218	State Library	96,000	Biennium
218	Library Commission	46,700	Biennium
218	Board of Mine Examiners	2,000	Biennium
218	Mine Inspectors	25,920	Biennium
218	Board of Parole	66,400	Biennium
218	Pharmacy Examiners	17,100	Biennium
218	Pioneer Law Makers	100	Biennium
218	State Printing Board, printing	281,440	Biennium
218	State Printing Board, salaries	37,700	Biennium
218	Superintendent of Public Instruction, salaries	70,700	Biennium
218	Superintendent of Public Instruction, for State aid	909,900	Biennium
218	Railroad Commission	203,425	Biennium

CHAPTER	FOR WHAT	AMOUNT	PERIOD
218	Reporter of Supreme Court and Code Editor	\$ 27,600	Biennium
218	Secretary of State	39,500	Biennium
218	Supreme Court	112,100	Biennium
218	Treasurer of State	159,490	Biennium
218	Board of Vocational Education	64,392	Biennium
223	Rental of typewriters for use of General Assembly	\$10 each Amount necessary	
223	Chaplains' fees for Forty-first General Assembly	\$1,000	Lump sum
223	Badges for General Assembly	100	Lump sum
252	Expenses of Mine Inspectors	Amount necessary	Until July 1, 1925
255	Executive Council, for cost of laundering towels for the Forty-first General Assembly	\$175	Lump sum
FOR SUPPORT AND MAINTENANCE OF STATE INSTITUTIONS			
CHAPTER	FOR WHAT	AMOUNT	PERIOD
218	State Hospital and Colony for Epileptics and Feeble-minded at Woodward	\$545,520.00	Biennium
218	Institution for Feeble-minded Children at Glenwood	794,950.00	Biennium
218	State Hospital for Insane at Cherokee	622,290.00	Biennium
218	State Hospital for Insane at Clarinda	644,700.00	Biennium
218	State Hospital for Insane at Independence	699,100.00	Biennium
218	State Hospital for Insane at Mt. Pleasant	650,750.00	Biennium
218	State Juvenile Home at Toledo	169,100.00	Biennium
218	State Penitentiary at Fort Madison	636,700.00	Biennium

CHAPTER	FOR WHAT	AMOUNT	AMOUNT
218	Men's Reformatory at Anamosa	\$633,400.00	Biennium
218	Women's Reformatory at Rockwell City	101,560.00	Biennium
218	State Sanatorium for Tuberculosis at Oakdale	514,412.50	Biennium
218	Iowa Soldiers' Home at Marshalltown	536,500.00	Biennium
218	Iowa Soldiers' Orphans' Home at Davenport	343,792.80	Biennium
218	Training School for Boys at Eldora	311,060.00	Biennium
218	Training School for Girls at Mitchellville	170,180.00	Biennium
218	Emergency fund at State institutions	50,000.00	Biennium
218	State roads at State institutions	40,000.00	Biennium
218	State University of Iowa	4,206,811.20	Biennium
218	Iowa State College of Agriculture and Mechanic Arts	4,817,774.00	Biennium
218	Iowa State Teachers College	1,423,500.00	Biennium
218	Iowa School for the Deaf	453,000.00	Biennium
218	Iowa School for the Blind	176,200.00	Biennium
218	Psychopathic Hospital	108,000.00	Biennium
254	Board of Control, for the purchase of butter for State institutions	50,000.00	Biennium
To SATISFY CLAIMS			
CHAPTER	FOR WHAT	AMOUNT	PERIOD
218	Relief of Frederick M. Hull	\$ 480.00	Biennium
218	Relief of Mitchell's cavalry	2,000.00	Biennium
223	Frank Vetter, for service to Fortieth General Assembly	11.00	Lump sum
223	Oley Nelson, for service to Fortieth General Assembly	2.60	Lump sum
223	Chas. P. Denison, for service to Fortieth General Assembly	16.20	Lump sum

CHAPTER	FOR WHAT	AMOUNT	PERIOD
223	T. D. Doke, for service to Fortieth General Assembly	\$ 12.00	Lump sum
223	R. H. Rhys, expense incurred as mine inspector	54.58	Lump sum
223	Chas. A. Lindenau, for services to extra session of Fortieth General Assembly	144.00	Lump sum
223	W. E. Holland, expense incurred as mine inspector	5.06	Lump sum
228	W. W. Hinshaw, for injury at Camp Dodge	3,763.05	Lump sum
229	D. E. Bullock, for injury received at Camp Dodge	2,500.00	Lump sum
231	F. J. Schadle, reimbursement of money wrongfully collected	300.00	Lump sum
232	Lyon County Farm Bureau, for use of hall	8.00	Lump sum
233	Martha Hutchins, for injury sustained as employee at State Hospital at Independence	1,000.00	Lump sum
234	J. W. Slocum, for services on Pharmacy Board	160.00	Lump sum
237	Paul E. Gibson, for medical services rendered paroled convict	229.50	Lump sum
237	John McDonald hospital, for medical treatment for paroled convict	157.00	Lump sum
238	Roy De Groat, for injury sustained at State Reformatory	1,000.00	Lump sum
239	Edgar R. Harlan, for expense incurred at the American Library Association meeting	61.14	Lump sum
240	Midwest State Bank, Sioux City, for payment of bonus warrant	350.00	Lump sum
241	Joseph J. Roeder, for injury sustained at Iowa State Teachers College	1,200.00	Lump sum

CHAPTER	FOR WHAT	AMOUNT	PERIOD
242	Wilfrd Hirt, for injury to automobile	\$1,000.00	Lump sum
243	Lynn Clemens, for clothing burned in Board of Health office	36.50	Lump sum
243	Fred McMullen, for clothing burned in Board of Health office	15.00	Lump sum
243	Robert McLaren, for clothing burned in Board of Health office	4.00	Lump sum
244	Joseph Kelso, Jr., for expense on Board of Conservation	815.00	Lump sum
249	Iowa City, for paving streets adjoining University property	7,870.00	Lump sum
251	Hardin County, for care of patients at the State Hospital for Insane	1,806.79	Lump sum
253	Charles L. Dunn, for services in Iowa National Guard	553.18	Lump sum
255	C. W. Best, for service as chaplain	5.00	Lump sum
255	C. W. Bonifield, for services as pharmacy examiner	91.20	Lump sum
255	A. C. Gustafson, for postage and stenographic expense	15.00	Lump sum
255	A. C. Gustafson, for postage and stenographic expense	25.80	Lump sum
255	Des Moines Rubber Stamp Co., for additional supplies	13.23	Lump sum
255	Hertzberg bindery, for binding	2.75	Lump sum
255	O. W. Lowery, for services	20.00	Lump sum
255	Walter H. Beam, for postage and telegraph expense	4.83	Lump sum
255	Mabel Saverude, for service as clerk	8.00	Lump sum
255	Emily Faris, for service as clerk	50.00	Lump sum
255	Secretary of the Senate and Clerk of the House and their assistants	Amount necessary	

FOR THE IMPROVEMENT OF STATE PROPERTY			
CHAPTER	FOR WHAT	AMOUNT	PERIOD
217	Capitol repairs	\$84,315.00	Lump sum
220	Payment of drainage assessment in Winnebago and Worth counties	400.00	Lump sum
225	Payment of drainage assessment in Muscatine County	1,718.06	Lump sum
225	Payment of drainage assessment in Louisa County	7,039.21	Lump sum
230	Purchase of land in Mills County for State farm	14,578.00	Lump sum
245	Construction of a draw bridge at Lake Okoboji	15,000.00	Lump sum
248	Payment of drainage assessment in Clay County — Mud Lake	6,520.86	Lump sum
255	Purchase and repair of tables at Law Library	600.00	Lump sum
255	Executive Council, for new blinds in Senate and House chambers	3,000.00	Lump sum
FOR MISCELLANEOUS PURPOSES			
CHAPTER	FOR WHAT	AMOUNT	PERIOD
218	Commission on Uniform Laws	\$ 500.00	Biennium
218	Medical and surgical treatment of indigent persons	1,800,000.00	Biennium
218	General contingent fund	40,000.00	Biennium
218	Insurance Examiners	\$10 per diem Amount necessary	
218	Assistant to State Auditor	\$7 per diem Amount necessary	

CHAPTER	FOR WHAT	AMOUNT	PERIOD
219	Superintendent of Public Instruction, traveling expense	\$1,500.00*	To June 30, 1925
221	Mileage and compensation of presidential electors	216.40	Lump sum
222	Expense of inaugural ceremonies	413.00	Lump sum
224	Kirkwood memorial	3,500.00	Lump sum
226	Purchase of World War memorial	3,500.00	Lump sum
227	Expense of junior dairy cattle judging team	4,000.00	Lump sum
235	Provide for Iowa exhibit at the sesqui-centennial exposition at Philadelphia	95,000.00	Lump sum
236	Expense of G. A. R. encampment	15,000.00	Lump sum
246	Aid for blind students	4,000.00	Biennium
247	Expense of National Encampment of Spanish-American War Veterans	10,000.00	Lump sum
250	Erection of markers at Spanish-American War encampment places	1,500.00	Lump sum

TAXATION

A considerable number of bills were passed dealing directly or indirectly with the subject of taxation. Some of these measures, however, are closely allied to other subjects and are discussed in connection with the subject of their primary interest, but some twelve measures may be considered as dealing primarily with taxation. Thus the gasoline tax law, on the basis of the use to which the tax collected is put, might be discussed in connection with highways, or if considered from the standpoint of the use of the article taxed, it might be discussed in connection with motor vehicles. Primarily, however, this law provides a form of taxation and may be discussed as such.

The demand for better roads in Iowa and the need of

more funds to carry on the work of road construction and maintenance resulted in the introduction of several bills relative to a tax on gasoline. The law which was finally enacted was introduced by a special committee but was the outgrowth of two other bills — one introduced by Senator A. H. Bergman, the other by Senator M. L. Bowman — and was a companion to a third bill introduced in the House by Representative David Brittain. The law imposes a tax of two cents per gallon on all gasoline sold within the State. Provision is made, however, for the refunding of the tax collected upon gasoline used for commercial or purposes other than that of propelling motor vehicles upon the public highways.

The proceeds are to be distributed as follows: one-third to the primary road fund; one-third to the county road fund; and one-third to the township road fund. The funds accruing to the counties and townships are apportioned by the State Treasurer among the counties of the State in the same ratio that the area of the county bears to the total area of the State and the money is remitted monthly. Within the county the gasoline tax money is apportioned among the townships in the same ratio that the number of miles of township roads in the township bears to the total number of miles of township roads within the county.

The law also requires any one selling or distributing gasoline to keep posted in a conspicuous public place the sale price, the amount of tax, and the total price per gallon charged to customers for the different grades of gasoline. He must also send monthly reports to the State Treasurer and keep all books and records relative to his business open for inspection; and penalties are prescribed for the violation of any of the regulations. A law similar to this was passed by the General Assembly in 1923, but was vetoed by Governor N. E. Kendall.

The *Code of 1924* provides that for county road building the board of supervisors shall levy annually a tax of not less than one mill nor more than two mills on all taxable property in the county. The gasoline tax law contains a provision which amended this section of the Code, so that under the present law the tax levy may be less than one mill, but shall not be more than two mills — the effect being to reduce the amount of property tax assessed for county road purposes.⁴⁹

Another law provides that all motor carriers shall be taxed on the basis of the ton-miles of travel — $\frac{1}{4}$ cent per ton-mile for vehicles having pneumatic tires and $\frac{1}{2}$ cent per ton-mile for vehicles having hard rubber tires. This law deals directly with motor carriers and is further discussed in connection with motor vehicles.⁵⁰

Two laws were passed by the Forty-first General Assembly dealing with the inheritance tax. The law formerly provided that the inheritance tax should not be collected if the property passed to societies or institutions within this State, incorporated for educational or religious purposes, or to cemetery associations, or societies organized for public charities. The law as it was rewritten by the Forty-first General Assembly allows exemption also in cases where the property is given for the benefit of "fraternal charitable institutions not maintained or operated for pecuniary profit including property which has heretofore so passed and upon which said tax has not been paid."⁵¹

The law of Iowa provides that if any estate or property, subject to inheritance tax, is not so reported, it is the duty of the clerk of the court to report it and for this service he shall receive a stipulated compensation, to be paid by the

⁴⁹ *Acts of the Forty-first General Assembly*, Ch. 6; *Code of 1924*, Sec. 4635.

⁵⁰ *Acts of the Forty-first General Assembly*, Ch. 4.

⁵¹ *Acts of the Forty-first General Assembly*, Ch. 150.

State. In like manner where there is litigation relative to an inheritance tax and decision is rendered adverse to the State the cost shall be paid by the State. Again, if inheritance taxes have been improperly paid or if the amount is excessive, such tax or excessive amount of tax may within a period of five years be refunded to the rightful party. Although the *Code of 1924* stipulates that these various sums shall be paid by the State, no funds were made available for their payment. A law of the Forty-first General Assembly provided for each of these contingencies by appropriating a sum sufficient to carry out the provisions of the law.⁵²

The law relative to the collection of delinquent taxes was amended by the passage of two bills. When taxes become delinquent it becomes the duty of the county treasurer to sell the property for taxes. A recent amendment to the law provides, however, that when any property has been offered by the county treasurer for sale for two consecutive years and not sold, or sold for only a part of the taxes due, the board of supervisors may compromise the claim and enter into a written agreement with the owner to accept a stipulated sum in full liquidation of all taxes due. A copy of such agreement shall be filed with the county treasurer and county auditor and when the stipulated sum is paid the treasurer and auditor shall cause their books to show that the claim for taxes has been satisfied.⁵³

Under a former provision of the law the compensation allowed to delinquent tax collectors was deducted from the several funds to which such taxes belonged. Interest and penalty on delinquent taxes are now turned into the general fund of the county and the collectors are paid from this

⁵² *Code of 1924*, Secs. 7384, 7388, 7396; *Acts of the Forty-first General Assembly*, Ch. 151.

⁵³ *Acts of the Forty-first General Assembly*, Ch. 148.

fund. On or before the tenth of each month the treasurer shall apportion all taxes collected during the preceding month, among the several funds to which they belong, and the interest and penalties thereon to the general fund, and report the same to the county auditor. Any interest or penalty on delinquent taxes apportioned to any fund other than the general fund, together with a penalty of ten per cent and interest at six per cent, may be recovered from the county treasurer or his bondsmen "by any person in control of the fund affected thereby".⁵⁴

In the interest of securing a complete assessment of all property to be taxed, the Executive Council is now authorized to assess any property which, during a period of five years last past, has been omitted from the tax list. The property shall be assessed in the regular manner except that a sum equal to ten per cent shall be added for each year for which the taxes were not paid. In case the property has been fraudulently withheld from assessment, the Council may, in addition to this ten per cent, add any additional per cent, not exceeding fifty per cent. Any tax based upon such assessment by the Executive Council shall be deemed delinquent from the date of entry upon the tax books. This measure represents new legislation and is not an amendment to existing sections of the Code.⁵⁵

Taxes upon stocks of goods or merchandise and upon fixtures and furniture in hotels, rooming houses, billiard halls, moving picture shows, and theaters constitute a lien thereon, and may be collected from the owner or purchaser, who shall be personally liable for the amount of the taxes due. This provision of the law has now been extended to apply also to fixtures and furniture of restaurants.⁵⁶

⁵⁴ *Code of 1924*, Sec. 7227; *Acts of the Forty-first General Assembly*, Ch. 149.

⁵⁵ *Acts of the Forty-first General Assembly*, Ch. 145.

⁵⁶ *Acts of the Forty-first General Assembly*, Ch. 193; *Code of 1924*, Sec. 7205.

For the purpose of establishing a county building repair fund the board of supervisors of any county having a population in excess of thirty thousand may levy in the years 1925 to 1928 inclusive, in addition to all other taxes, a tax of not to exceed one-fifth of a mill on the taxable value of all property except moneys and credits, and a tax of not to exceed one-fifth of a mill on one-fourth of the actual value of moneys and credits. The proceeds of this tax shall be known as the county building repair fund and shall be used solely for the repair of county buildings located at the county seat. This measure was introduced by Senator Wm. E. McLeland of Marshall County, which in 1920 had a population of 32,630.⁵⁷

For the purpose of erecting a township hall, the trustees may upon petition submit to the voters of the township the question of making a tax levy to be used for building purposes. If the vote upon this proposition is favorable the board of supervisors shall levy the tax. Under the former provision of the law this tax could not exceed three mills on the dollar on the taxable property of the township. An amendment to the law, which was introduced by Representative G. E. Held of Plymouth County allows this tax to be levied "each year for a period not exceeding five (5) years." Thus in the aggregate the tax may now amount to fifteen mills on the dollar instead of three mills as under the former law.⁵⁸

For the purpose of regulating the sale of cigarettes the law provides that all cigarettes sold within the State shall be put up in packages and each package shall have affixed thereto a suitable stamp denoting the tax thereon. The Auditor of State shall prepare and have suitable stamps, which upon requisition he shall deliver to the State Treas-

⁵⁷ *Acts of the Forty-first General Assembly*, Ch. 206.

⁵⁸ *Acts of the Forty-first General Assembly*, Ch. 106; *Code of 1924*, Sec. 5575.

urer, who in turn shall sell them to dealers holding unrevoked permits. The money received from such sale is known as the cigarette tax and is turned into the general fund of the State. In accordance with a recent provision of the law, introduced by Senator Jonas D. Buser, any spoiled or unused stamps in the hands of either the Auditor or Treasurer shall be destroyed upon a joint certificate by the Auditor, Treasurer, and State accountant, setting forth the number, denomination, and face value of the same. Upon the written request of the original purchaser and the return of any unused stamps, the Treasurer shall redeem such stamps and cause a refund to be made therefor. The law carries with it an appropriation for the redemption of these unused stamps by the Treasurer and provides that it shall be unlawful for any dealer to sell such stamps to any person whomsoever.⁵⁹

Each year the Executive Council must fix the rate in percentage to be levied upon the valuation of the taxable property of the State necessary to raise such amount for general State purposes as shall have been designated by the General Assembly. In accordance with this law the Forty-first General Assembly passed an act designating and fixing the amount of such revenue at the sum of \$8,865,000 annually for the biennium.⁶⁰

Another law passed by the Forty-first General Assembly is one which amends the Code slightly with regard to license fees collected for the use of public scales. Although this law falls only indirectly under the subject of taxation, it may be mentioned in this connection. The *Code of 1924* stipulates that a fee of three dollars per year shall be assessed as a license fee for each public scale, and that the

⁵⁹ *Acts of the Forty-first General Assembly*, Ch. 146; *Code of 1924*, Secs. 1574, 1575.

⁶⁰ *Acts of the Forty-first General Assembly*, Ch. 216; *Code of 1924*, Sec. 7182.

year for this purpose "shall expire on December thirtieth". Obviously the authors of the law intended to designate the calendar year which ends on December thirty-first. Accordingly a law was passed changing this date from December thirtieth to December thirty-first.⁶¹

COUNTY OFFICERS AND GOVERNMENT

Governmental officers are as a rule required to give bonds to insure the faithful performance of duty. In Iowa the bonds of State and district officers are approved by the Governor, and those of county officers by the board of supervisors. Until recently the bonds of the members of the board of supervisors were approved by the judge of the district court. Recent legislation upon this subject, however, provides that such bonds may be approved either by the judge or clerk of the district court.⁶²

The amount of the official bond which is required varies with the several offices, depending upon the nature and character of the work to be done, and the responsibility of the position. The *Code of 1924* provides that the bonds of the treasurers, clerks of the district courts, county attorneys, county auditors, and sheriffs shall be in such penal sum as the board of supervisors may direct, but that it shall not be fixed at a sum less than five thousand dollars. A law introduced by Senator Jonas D. Buser removes the treasurer from this list of officers, and stipulates that the "bond of the county treasurer shall be in the sum of ten thousand dollars".

This law also provided that all "losses of funds in the legal custody of a county treasurer, resulting from any act of omission or commission for which the said treasurer is legally responsible, except losses to the amount of the

⁶¹ *Code of 1924*, Sec. 3260; *Acts of the Forty-first General Assembly*, Ch. 62.

⁶² *Acts of the Forty-first General Assembly*, Ch. 22; *Code of 1924*, Sec. 1073.

treasurer's bond, and except losses which are or may be occasioned by depositing said funds in authorized depositories, shall be replaced by the several counties of the state'', thus distributing the loss over the State. The apportionment of the loss thus sustained shall be distributed among the various counties in the proportion which the taxable property of each county bears to the total taxable property of all the counties of the State.⁶³ Another measure of recent legislation — the State sinking fund law — which will take care of losses where funds have been deposited in authorized depositories will be discussed in connection with banking.⁶⁴

Four measures of recent legislation were passed with regard to the compensation of county officers. The salary of the assistant county attorney varies in the several counties of the State depending upon the population of the county. Thus prior to 1925 in counties of less than thirty-six thousand no salary was provided for this office. In counties of from thirty-six to forty-five thousand the salary was \$1000; in counties of from forty-five thousand to seventy thousand, \$1500; and in counties above seventy thousand, \$2000. A law, introduced by Senator W. S. Baird of Pottawattamie County and approved on March 20, 1925, provided that in counties from forty-five thousand to fifty-eight thousand the salary should be \$1500; in counties from fifty-eight thousand to one hundred and forty thousand, \$2000; and in counties of one hundred and forty thousand and over the salary was fixed at \$2500.

Thus under the new law, in counties having a population of from fifty-eight thousand to seventy thousand—Dubuque and Pottawattamie counties — the salary is increased from

⁶³ *Code of 1924*, Secs. 1065, 1066; *Acts of the Forty-first General Assembly*, Ch. 95.

⁶⁴ *Acts of the Forty-first General Assembly*, Ch. 173.

\$1500 to \$2000; moreover, in a county having a population of more than one hundred and forty thousand — Polk County being the only one — the increase is from \$2000 to \$2500. In other counties the schedule of salaries remains unchanged.⁶⁵

Section 1218 of the *Code of 1924*, relative to salaries and fees in general, provides that the salaries of all officers authorized by the Code shall be paid in equal monthly installments "at the end of each month". Section 5235 of the Code, dealing with the compensation of county officers, stipulates that salaries "shall be paid out of the general fund of the county in twelve equal installments, one on the first day of each calendar month". A measure was introduced by Senator Julius A. Nelson to amend this latter section by striking out the provision relative to the number of installments and the time of payment, leaving the provision, simply, that they shall be paid out of the general fund of the county. An attempt was made to amend this provision by adding the words: "as provided in section 1218 of the Code of 1924". The amendment was lost but the original measure was passed, thus rendering the two sections uniform.⁶⁶ Section 5235 was further amended to provide that the salary of the clerk and deputy clerk of the district court may be paid from the "court expense fund".⁶⁷

Section 10639 of the Code provides that in townships having a population of ten thousand or more, justices of the peace and constables shall receive in compensation for their services certain stipulated sums, "which shall be paid quarterly out of the county treasury." In order to make this section conform with the other sections of the Code

⁶⁵ *Code of 1924*, Sec. 5229; *Acts of the Forty-first General Assembly*, Ch. 101.

⁶⁶ *Acts of the Forty-first General Assembly*, Ch. 98; *Senate Journal*, 1925, pp. 358, 398; *House Journal*, 1925, pp. 608, 854.

⁶⁷ *Acts of the Forty-first General Assembly*, Ch. 125; *Code of 1924*, Secs. 5230, 5231.

just referred to, the law was amended so as to provide for monthly instead of quarterly payments.⁶⁸

The law authorizes the county sheriff to charge a fee of two dollars for each warrant served by him. Moreover, he is entitled to a repayment of necessary expenses incurred in executing such warrant, or in attempting in good faith to execute it, if service can not be made. Mileage at the rate of ten cents per mile may be allowed in lieu of expense, but in no case shall the law be construed to allow both mileage and expenses for the same services and for the same trip. A recent amendment provides that in counties having a population of one hundred thousand or over, the board of supervisors may contract with the sheriff for the use of an automobile on a monthly basis in lieu of the payment of mileage, in the service of criminal processes.⁶⁹

In connection with the work of the juvenile court it is the duty of the judges to appoint probation officers — the number and salary of such officers being based upon the population of the county. Thus in counties having a population of between fifty thousand and one hundred and twenty-five thousand provision is made for the appointment of a chief probation officer at a salary of \$2000 and two deputies at a salary of \$1500. In any county having a population of more than one hundred and twenty-five thousand, which includes only Polk County, the law until recently provided for a chief probation officer at a salary not to exceed \$3000 and five deputies at a salary of \$1800 each. This section of the law has been amended, so that in such a county, ten deputies may now be appointed. Three of such deputies may receive an annual salary of \$2200 each and the remaining seven shall receive \$1800 each.⁷⁰ This amendment and

⁶⁸ *Acts of the Forty-first General Assembly*, Ch. 105.

⁶⁹ *Acts of the Forty-first General Assembly*, Ch. 100; *Code of 1924*, Sec. 5191.

⁷⁰ *Acts of the Forty-first General Assembly*, Ch. 96; *Code of 1924*, Sec. 3612.

the one relative to compensation of the sheriff were introduced by Representative Diltz.

It is the duty of the board of supervisors at its January meeting to select two or three newspapers in which the official proceedings shall be published for the ensuing year. The *Code of 1924* provided that such official newspapers should publish: (1) The proceedings of the board of supervisors, including their proceedings as a canvassing board of the various elections as provided by law; (2) "The schedule of bills allowed by said board."

A recent act of the legislature amended this latter provision by adding the following: "All proceedings of each regular, adjourned, or special meeting of the board of supervisors, including the schedule of bills allowed, shall be published promptly after such meetings." Thus the proceedings of the board, of whatever character, should now be promptly published in the official newspapers.⁷¹

The board of supervisors may, upon a petition signed by twenty-five per cent of the qualified voters of the county, submit to the voters of the county the proposition to purchase real estate to the extent of one thousand dollars for county or district fair purposes. If a majority of the votes cast are in favor of the proposition the board shall make the authorized purchase and pay for the same out of the general fund of the county. This provision of the law has been amended in such a manner as to authorize the board to accept land as a gift to be used for fair purposes, "or accept as a gift from the owner a county or district fair ground already in existence."⁷²

It is the duty of the board of supervisors to hold and manage the securities given to the school fund in its county

⁷¹ *Acts of the Forty-first General Assembly*, Ch. 99; *Code of 1924*, Sec. 5411.

⁷² *Acts of the Forty-first General Assembly*, Ch. 58; *Code of 1924*, Secs. 2906, 2907.

and all judgments and lands belonging to that fund. It may have any part of the school lands surveyed when necessary. Formerly the supervisors were authorized to employ the "county surveyor" for this purpose, but a recent change in the law allows them to employ any "competent" surveyor. The cost of making such survey is paid out of the county treasury.⁷³

County funds to be used for a specific purpose are, as a rule, placed in a separate fund and retained for that purpose only. It occasionally happens, however, that a particular fund is not needed for the purpose designated and may upon proper legislative authority be transferred to another fund. In accordance with this principle, an act was passed by the Forty-first General Assembly authorizing the board of supervisors in certain counties to transfer money from the bridge fund to the county road fund, provided, however, that the sum so transferred should not exceed ten thousand dollars.⁷⁴

A law very similar to this was passed giving the board of trustees of Cedar Township, Monroe County, authority to transfer the sum of four hundred and fifty dollars from the cemetery fund to the general road fund.⁷⁵

The board of supervisors of Palo Alto County was likewise authorized "to transfer from the county bridge fund of said county, the balance on hand at the end of the calendar year, 1925, to the county road building fund and to expend the same" as provided by law. Such acts are, of course, really special legislation, but they are couched in such language as to be construed as general and thus constitutional.⁷⁶

⁷³ *Acts of the Forty-first General Assembly*, Ch. 91; *Code of 1924*, Sec. 4483.

⁷⁴ *Acts of the Forty-first General Assembly*, Ch. 203.

⁷⁵ *Acts of the Forty-first General Assembly*, Ch. 207.

⁷⁶ *Acts of the Forty-first General Assembly*, Ch. 208.

The county recorder is authorized by law to charge and collect certain fees for the recording of instruments — the amount of the charge depending upon the length of the instrument recorded. In this connection the recorder is charged with the duty of keeping a fee book, in which a record of all fees must be kept. Until recently the “exact time” of filing each instrument had to be recorded in the fee book. This provision of the law has been changed so that the “date” of filing is now sufficient.⁷⁷

Section 5235 of the *Code of 1924* provided that the salaries of county officers should be paid from the general fund of the county. This has been amended to provide that the salary of the clerk and deputy clerk of the district court may be paid “from the court expense fund”. The salaries of municipal court judges, clerk, bailiff, and their deputies were formerly paid one month from the city treasury and the next month from the county treasury, thus alternating the payments between the city and the county. This law was also amended to provide that payments be made from the city and from the “court expense fund” respectively.⁷⁸

MUNICIPAL LEGISLATION

The expanding needs and functions of city government in Iowa have in recent years led to extensive legislation upon this subject. No less than thirty-two measures dealing directly with municipalities were passed by the Forty-first General Assembly, while other measures touched the subject indirectly.

Municipal Officers and Employees.—In the interest of firemen a recent law provides that employees in the fire department of cities of the first class having a population

⁷⁷ *Acts of the Forty-first General Assembly*, Ch. 102; *Code of 1924*, Sec. 5178.

⁷⁸ *Acts of the Forty-first General Assembly*, Ch. 125; *Code of 1924*, Secs. 5235, 10688.

of twenty-five thousand shall not be required to remain on duty for more than an average of twelve hours per day, and no single period or shift shall exceed twenty-four hours in length, except in cases of "serious emergencies". This measure is the result of a bill introduced by Senator M. L. Bowman of Black Hawk County.⁷⁹

All cities having an organized police department or a paid fire department are required to levy annually a tax not to exceed one-half mill for each such department, for the purpose of creating firemen's and policemen's pension funds. Formerly commission governed cities with a population over one hundred and twenty-five thousand might levy an additional one-half mill for each such department and any city with a population over thirty-five thousand having a city manager might levy an additional one mill tax for each department. Two measures were passed amending this section of the law. One, introduced by Senator W. S. Baird, provides that "cities having a population in excess of thirty-five thousand, including cities under special charter, may levy an additional tax not to exceed one-half mill for each such department for such purpose."⁸⁰ This makes the additional one-half mill tax more general. The other, presented by Representative Joseph Wagner, provides that whenever there is a sufficient balance in the pension funds to meet any proper or legitimate charges that may be made, the city shall not be required to levy a tax for this purpose.⁸¹

According to the provisions of the *Code of 1924* the compensation of the assessor in cities of the first class shall not be more than eighteen hundred dollars per year nor less than five dollars per day for the time actually employed. This provision of the Code was repealed by the Forty-first

⁷⁹ *Acts of the Forty-first General Assembly*, Ch. 116.

⁸⁰ *Acts of the Forty-first General Assembly*, Ch. 142; *Code of 1924*, Sec. 6310.

⁸¹ *Acts of the Forty-first General Assembly*, Ch. 141.

General Assembly and in lieu thereof a measure was enacted which provides that in cities of the first class having a population of from twenty-five thousand to forty-five thousand the compensation shall be eighteen hundred dollars per year. In cities of a less population it shall not be more than eighteen hundred dollars a year nor less than five dollars per day for the time actually employed. Thus in cities having a population of from twenty-five thousand to forty-five thousand the salary is a fixed sum, while in the smaller cities, including some cities of the first class, it may vary as under the former law.⁸²

The *Code of 1924* provided that in cities under the commission plan, the chief of the fire department should be appointed from the civil service list and the superintendent of public safety with the approval of the council should appoint the chief of police and chief of the fire department. In cities under the manager plan the manager should make such appointments, and in all other cities such appointments should be made by the mayor. This section has been amended by adding: "A police officer under civil service may be appointed chief of police without losing his civil service status, and shall retain, while holding the office of chief, the same civil service rights he may have had immediately previous to his appointment as chief, but nothing herein shall be deemed to extend to such individual any civil service right upon which he may retain the position of chief." Accordingly, the appointment of a person to the office of chief of police does not affect his civil service rights.⁸³

Paragraph 7 of Section 5639 of the *Code of 1924* relative to powers and duties of the mayor contains the following provision: "Until a police judge or judge of superior court

⁸² *Acts of the Forty-first General Assembly*, Ch. 129; *Code of 1924*, Sec. 5669.

⁸³ *Acts of the Forty-first General Assembly*, Ch. 127; *Code of 1924*, Sec. 5699.

shall be elected and qualified in cities entitled to elect such officer, he shall have all the powers and jurisdiction and shall hold the police court in such manner as is required of such judge." The antecedent of the pronoun "he" as used in this connection was not clear. Accordingly a measure was passed which provides for striking out the word "he" and substituting therefor the words "the mayor".⁸⁴

A board of hospital trustees in the cities of Iowa has formerly consisted of three members, elected at a general or special election for a term of six years. Under the new law cities having a population of fifty thousand or more may increase the number to five. Provision is made for the appointment of one member to serve until the next general or city election and another member to serve until the second succeeding general or city election. Thereafter the terms of office of all such members of these boards shall be six years.⁸⁵

Prior to 1925 the laws were not uniform with regard to the time at which municipal boards and commissions should make annual reports to the council. The park commissioners, for example, were to report to the council "at the regular April meeting", while the board of library trustees was required to report, "for the year ending December thirty-first".

In the interest of uniformity Senator E. E. Cavanaugh introduced a bill providing that the fiscal year for all cities and towns and for all departments, boards, and commissions thereof begin on the first day of April each year and end on March thirty-first following. This measure was adopted by the Forty-first General Assembly and several provisions of the Code were amended so that reports of the several boards and commissions are now to be presented to

⁸⁴ *Acts of the Forty-first General Assembly*, Ch. 126; *Code of 1924*, Sec. 5639.

⁸⁵ *Acts of the Forty-first General Assembly*, Ch. 133; *Code of 1924*, Sec. 5867.

the council "immediately after the close of each municipal fiscal year".⁸⁶

Accounts kept by city officers must be examined under the direction of the Auditor of State. The law formerly provided that such examinations be made "biennially". The law has been slightly amended in this regard—the provision now being that examination be made "at least once each two (2) years". Under the new law examinations may be made at more frequent intervals if it is deemed necessary or advisable.⁸⁷

Ordinances.—All municipal ordinances of a general or permanent nature and those imposing any fine or penalty are, upon their passage, required to be published in a newspaper of general circulation. If no such newspaper is published in the city or town, ordinances may be posted in three public places in lieu of publication. When ordinances are published in book or pamphlet form, such book or pamphlet shall be received as evidence of the passage and legal publication of such ordinances. A bill relating to this subject, introduced by Representative A. G. Rassler, was enacted into law by the Forty-first General Assembly. This new law adds to the foregoing section the provision that when a town revises its ordinances, it shall file a typewritten copy of the revision in the office of the town clerk and publish a notice once each week for three consecutive weeks in a newspaper published in the town, stating that its ordinances have been revised and that a copy of the revision is on file in the clerk's office. If no newspaper is published in the town the clerk shall post the notice in three public places within the town.⁸⁸

⁸⁶ *Acts of the Forty-first General Assembly*, Ch. 128; *Code of 1924*, Secs. 5799, 5866.

⁸⁷ *Acts of the Forty-first General Assembly*, Ch. 123; *Code of 1924*, Sec. 113.

⁸⁸ *Acts of the Forty-first General Assembly*, Ch. 130; *Code of 1924*, Sec. 5721.

Street Improvement.—Three measures were passed by the Forty-first General Assembly dealing directly with street improvement. Representative Ray Yenter of Johnson County presented a bill which provides that cities and towns, including cities under special charters, may issue refunding bonds to pay off and take up bonds issued in payment of street improvement. The interest rate on the refunding bonds shall not exceed that of the bonds refunded. Provision is made for retirement of the new bonds in the same manner as in case of the refunded bonds. The city or town shall collect the special assessments out of which the bonds are payable and hold the same for the purpose designated.⁸⁹

Section 6899 of the *Code of 1924* provides that the cost of making or reconstructing any street improvement, not ordered to be paid from the city improvement or grading fund or by any railway or street railway, shall be assessed as a special tax against the property abutting thereon, "in proportion to the linear front feet thereof." This provision was amended at the session of the Forty-first General Assembly so that such expenses are now assessed against "all lots according to area, so as to include one half of the privately owned property between the street improved and the next street, whether such privately owned property abut upon said street or not." Thus property whether abutting on the street or not is now assessed on the basis of area. In no case, however, except where the district method of assessment is used, shall property situated more than three hundred feet from the street so improved be assessed. The costs of constructing electric light fixtures, however, are still assessed to abutting lots according to the number of linear front feet.⁹⁰

⁸⁹ *Acts of the Forty-first General Assembly*, Ch. 115.

⁹⁰ *Acts of the Forty-first General Assembly*, Ch. 144; *Code of 1924*, Sec. 6899.

The Code also provides that the costs of street extension, repair, and improvement may be paid for from the general fund, the grading fund, or from the highway or poll taxes of the city, or from each such funds, or by assessing all or any portion of the cost thereof on abutting and adjacent property according to the benefits derived from such extension, repairs, and improvements. The words "as provided in chapter three hundred eight (308) of the code, 1924", have now been added to this section.⁹¹

In the interest of better municipal lighting, Senator William J. Goodwin presented to the legislature a measure which authorizes the city council in a city of the first class to divide such city into two districts for the purpose of lighting; one to be known as the "Metropolitan Lighting District", to embrace all of the property abutting upon streets lighted by electroliers or similar devices; and the other to be known as the "General Lighting District", to embrace all of the area of the city not included in the first named district. The council is further authorized to levy a special tax upon the property of the metropolitan lighting district to defray the expense of lighting such district. This tax is in addition to all other taxes, but must not exceed two mills.⁹²

Another section of the law, which applies indirectly to the care of city streets, was amended. This deals with the destruction of noxious weeds growing within the boundaries of municipalities. The Code formerly provided that this law should be enforced by the councils and commissioners of cities and towns, "irrespective of their local form of government". This has now been amended so as to include by specific reference "cities under special charter".⁹³

⁹¹ *Acts of the Forty-first General Assembly*, Ch. 134; *Code of 1924*, Sec. 5940.

⁹² *Acts of the Forty-first General Assembly*, Ch. 122.

⁹³ *Acts of the Forty-first General Assembly*, Ch. 124; *Code of 1924*, Sec. 4817.

Drainage.—Five measures related to sewers and drainage in cities. The purpose of one of these measures was to define what is meant by “sewer” as used in this connection. The word was defined as including any structure “designed to control streams and surface waters flowing into sewers” and the cost of acquiring lands and easements for the control of such waters may be charged as the “cost of construction of sewers”.⁹⁴

In another instance, where the *Code of 1924* makes provision for paying the costs “of reconstructing and repairing” sewers, the law was amended in such manner as to include the cost of original “construction” as well as that of reconstruction and repair.⁹⁵

When the boundary limits of two or more municipalities join and such municipalities are located upon a river or stream which furnishes drainage and is also the source of water supply for the inhabitants of either or both of the cities, such cities may contract for the joint use of the sanitary sewer system of either.

Special assessments may be levied to pay for the benefits derived from this joint sanitary system, and sewer certificates and sewer bonds may be issued in anticipation of such a special assessment. The annual charge agreed upon by the cities in this contract may be paid either from the sewer fund tax or the sewer outlet and purifying plant tax as provided by law. This law enables two or more cities, which may be favorably situated upon the same river or stream, to use the same sewage system.⁹⁶

As a protection against floods cities are authorized to deepen, widen, or otherwise improve water courses within their limits by constructing levees, embankments, or con-

⁹⁴ *Acts of the Forty-first General Assembly*, Ch. 135; *Code of 1924*, Sec. 5974.

⁹⁵ *Acts of the Forty-first General Assembly*, Ch. 136; *Code of 1924*, Sec. 6015.

⁹⁶ *Acts of the Forty-first General Assembly*, Ch. 120.

duits. They may levy special assessments against any property which is in any way benefited by such improvement and may issue bonds and certificates in anticipation of such assessments. Upon the filing of a petition, signed by one hundred resident taxpayers, requesting such protection, the city council may direct the engineer to make surveys and prepare plans, with maps and plats showing the districts to be benefited. All "property which will, in any way, be specially benefited by such improvement may be included within the boundaries of the district."⁹⁷

Any city or town may levy annually a special tax not to exceed five mills, which shall be used only to construct sewer outlets and sewage purifying plants "and to purchase dump grounds"—the last provision being the result of a recent amendment. Moreover, a city or town may anticipate the collection of such a tax and may issue certificates or bonds to secure funds for that purpose.⁹⁸

It is the duty of the county board of supervisors at its April meeting each year to fix the time for the destruction of noxious weeds along the highways. Different times may be designated for the destruction of various kinds of weeds. The Forty-first General Assembly amended this section of the law in accordance with a bill presented by Representative Joseph Wagner, so as to make it applicable to cities and towns. The amended law provides that "the city or town council may at any regular meeting fix a date not later than that fixed by the board of supervisors of the county in which the city or town is situated" at which times noxious weeds shall be destroyed.⁹⁹

⁹⁷ *Acts of the Forty-first General Assembly*, Ch. 152; *Code of 1924*, Secs. 6080, 6081.

⁹⁸ *Acts of the Forty-first General Assembly*, Ch. 139; *Code of 1924*, Secs. 6211, 6261.

⁹⁹ *Acts of the Forty-first General Assembly*, Ch. 107; *Code of 1924*, Sec. 4821.

In accordance with a provision of the law which resulted from a bill introduced by Senator W. S. Baird, cities and towns which own and operate waterworks may extend the water mains and assess the costs of such extension to abutting property. A petition asking for such improvement must be signed by seventy-five per cent of the resident owners of property and presented to the board of waterworks trustees or to the city council, if there be no such board. If the estimated cost of such extension, not including cost of material, does not exceed twenty-five hundred dollars the work may be done by day labor under the supervision of the board or the city council. When a pipe in excess of six inches in diameter is used, the assessment against the property shall be limited to what six-inch pipe would cost, and the excess amount must be paid by the water department or from water funds. The law contains further provisions relative to special assessments, rebates, and repayment of assessments in case an extension is carried across unplatted lands.¹⁰⁰

Cities having a population of over ten thousand have power to levy, in addition to the regular water tax, a tax of two mills upon the dollar upon property within the corporate limits of said cities for the purpose of creating a sinking fund to be used for the purchase or erection of waterworks, or for the payment of any indebtedness for waterworks now owned by the city. The proceeds of such two-mill levy, "together with such other surplus funds as may be set aside as a sinking fund by the board of waterworks trustees", shall be deposited in one or more solvent banks or trust companies. If waterworks have been purchased and the original bonds are outstanding and have not matured, the sinking fund and such other surplus funds as may be appropriated for that purpose may be invested in

¹⁰⁰ *Acts of the Forty-first General Assembly*, Ch. 118.

registered bonds of the United States and of the State of Iowa and in United States treasury certificates.¹⁰¹

Cities having a population of one hundred thousand or more may purchase or otherwise acquire property to be used for waterworks purposes within the corporate limits or within ten miles of such limits. The *Code of 1924* provides that property once acquired for such purpose can not be sold or disposed of until such sale or disposal shall have been approved of by a majority of the legal voters of the city, voting thereon at a general, city, or special election. Further provision is made that in no case shall such property be leased for a period of longer than twenty-five years. Recent legislation provides, however, that the board of waterworks trustees may, with the consent and approval of the city council, "lease or sell any real estate owned and held as a part of the waterworks plant when the same is no longer needed or necessary in the operation of said waterworks plant." This law applies only to cities having a population of one hundred thousand or more and although stated in general terms affects only the city of Des Moines.¹⁰²

Authority is given cities to establish and regulate markets, to build market houses, and regulate the same; to provide for the measuring or weighing of merchandise offered for sale; and to prescribe the kind and description of articles which may be sold in the markets. No charge or assessment of any kind shall be made or levied on persons bringing produce or provisions to the market. A recent law presented by Senator B. M. Stoddard provides, however, that a city may by ordinance fix reasonable charges to be paid by those occupying spaces in market places. Such charges shall be used solely for the purpose of improving

¹⁰¹ *Acts of the Forty-first General Assembly*, Ch. 137; *Code of 1924*, Sec. 6152.

¹⁰² *Acts of the Forty-first General Assembly*, Ch. 138; *Code of 1924*, Sec. 6161.

market places and to defray the actual expense of the city in conducting the same.¹⁰³

In the interest of community centers the *Code of 1924* provided that the city council should appoint from the residents of the district three persons especially qualified for the work, who should be known as the "community center board". This board, under the direction of the council, should direct community center affairs. Under the provisions of the law as amended the council may appoint such a board, or it may, if it so desires, manage the affairs of the community center directly instead of appointing a managing board as provided for under the previous law.¹⁰⁴

Cities having a population of fifty thousand or more, including cities acting under special charters, may now provide for the establishment and maintenance of a municipal art gallery; may purchase, erect, or rent buildings for this purpose; and provide for the compensation of the necessary employees. It is the duty of the mayor to appoint a board of trustees, consisting of five, seven, or nine members, who shall have charge of and supervise the public art gallery, make purchases, receive, hold, and dispose of gifts and bequests, and control the expenditure of all taxes levied for, and other money belonging to, the art gallery fund. The city council may each year appropriate money from the general fund for art gallery purposes. This law although stated in general terms, applies only to the cities of Des Moines, Sioux City, and Davenport — these being the only cities in the State with a population of fifty thousand or over.¹⁰⁵

The *Code of 1924* provides that cities of the first class may designate and establish restricted residence districts.

¹⁰³ *Acts of the Forty-first General Assembly*, Ch. 131; *Code of 1924*, Sec. 5768.

¹⁰⁴ *Acts of the Forty-first General Assembly*, Ch. 132; *Code of 1924*, Sec. 5832.

¹⁰⁵ *Acts of the Forty-first General Assembly*, Ch. 119.

This action is mandatory if petitioned for by sixty per cent of the owners of real estate in the district affected, residing in the city. This law has been amended so as to extend this same power to cities of the second class. Thus the law has been extended to include all cities of the State.¹⁰⁶

The council of each city and town, including commission governed cities and special charter cities, may by ordinance provide for the establishment of a city plan commission for such municipality, consisting of not less than seven members to be appointed by the mayor, subject to the approval of the council. The persons so selected must be citizens of such municipality, be qualified by knowledge or experience to act in matters pertaining to development of a city plan, and shall not hold any elective office in the municipal government. This commission shall have power to make or cause to be made such surveys, studies, maps, plans, or charts of the whole or any part of the municipality or land outside which should be included in a comprehensive plan. Such plans or studies may be published or otherwise presented to the city council. Where such a city plan commission exists, all plats and plans for the laying out of new divisions or subdivisions or for the opening of streets or alleys shall be submitted to the commission and its recommendation obtained before it is approved by the city council. Money may be appropriated from the general fund for the expense of this commission.¹⁰⁷

Any city or town may anticipate the collection of taxes authorized to be collected for special funds, and for that purpose may issue certificates or bonds with interest coupons. A number of special funds which may be provided for in this manner, such as the grading fund, city improvement fund, and city sewer fund are enumerated in the Code.

¹⁰⁶ *Acts of the Forty-first General Assembly*, Ch. 143; *Code of 1924*, Sec. 6474.

¹⁰⁷ *Acts of the Forty-first General Assembly*, Ch. 117.

To this group has recently been added the "cemetery purchase fund". Accordingly, a city or town may now issue certificates or bonds in anticipation of taxes to be collected for a cemetery purchase fund.¹⁰⁸

A city having a population of thirty-five hundred or over, situated in a county having a population of one hundred and fifty thousand or over, may through action of its city council expend money to aid in the purchase of land within the county for State parks which, when purchased, shall be the property of the State, to be cared for as a State park. The amount of money to be expended for this purpose by any city is limited to one-half of the purchase price of the land involved, and shall not in any case exceed fifty thousand dollars. The money used for this purpose may be paid from the general fund, the park fund, or be provided by a special tax levy. Although this law is general in its terms, it applies only to the cities of Valley Junction and Des Moines — these being the only two cities of thirty-five hundred or more situated in a county of one hundred and fifty thousand inhabitants.¹⁰⁹

If money belonging to a city or town is to be transferred from one fund to another, the law requires that notice "shall be given by publication in one or more newspapers published in the city or town". This law was recently amended to provide that if there is no such newspaper published in the city or town, then publication may be in a newspaper of general circulation within the municipality.¹¹⁰

Three measures were passed by the Forty-first General Assembly which affect the government of individual cities and towns. In the first instance the town of Melrose was authorized to transfer the sum of fifteen hundred dollars

¹⁰⁸ *Acts of the Forty-first General Assembly*, Ch. 104; *Code of 1924*, Sec. 6261.

¹⁰⁹ *Acts of the Forty-first General Assembly*, Ch. 121.

¹¹⁰ *Acts of the Forty-first General Assembly*, Ch. 140; *Code of 1924*, Sec. 6216.

from the general fund to the electric bond fund, in which there was a deficit.¹¹¹

Authority was also granted to owners of shore lands on the Missouri River, in the city of Sioux City, to establish a shore line. By the provisions of this act the State of Iowa released all right, title, or interest, which it might have in the lands lying north of the new shore line of the Missouri River.¹¹²

A third measure of this kind was one which granted to the city of Des Moines certain real estate comprising the abandoned river channels of the Raccoon and Des Moines rivers occasioned by the altering and changing of the channels of said rivers by the city of Des Moines for the protection of lots, lands, and property within the limits of the city from danger and damage from floods and high water.¹¹³

SCHOOL LEGISLATION

The law relative to the establishment and organization of school districts formerly provided that whenever any new school corporation has been established, such corporation shall elect a board of directors "in accordance with the new boundaries". Further provision was made that in the formation of a new sub-district containing a village of seventy-five or more, the school officers already holding office in the district having the largest number of votes shall become officers of the new district. As a result of a bill introduced by Representative L. V. Carter this law was amended to provide that in the formation of such a sub-district, the officers of the district affected having the largest population shall become officers of the new district

¹¹¹ *Acts of the Forty-first General Assembly*, Ch. 212.

¹¹² *Acts of the Forty-first General Assembly*, Ch. 213.

¹¹³ *Acts of the Forty-first General Assembly*, Ch. 214.

“in all cases where the population, outside said major district and within the newly formed district, does not exceed twenty-five per cent (25%) of the population of said major district.” If, however, the population of the district outside the major district exceeds twenty-five per cent of the major district, the board of directors of the latter shall give notice of an election at which new officers shall be chosen.

Thus if two districts, one containing a village of seventy-five or more and having a population four times as large as the other, are united to form a new district, the directors of the more populous district shall retain office. If neither district contains a population four times as great as the other, an election must be called to elect new directors. If the officers of the former district hold over, they serve until the expiration of the time for which they were originally elected.¹¹⁴

A school corporation organized for the purpose of maintaining a consolidated school may be legally dissolved by the following procedure. A petition signed by a majority of the qualified voters residing within the corporation must be filed with the county superintendent. A day is then set for hearing at which time persons interested may present to the county superintendent any evidence or arguments relative to the question. The county superintendent then considers the matter on its merits, and within five days after the conclusion of the hearing shall rule on any objections and enter an order of approval or dismiss the petition. An appeal may then be taken by any person living or owning land within the school corporation, and such appeal will be dealt with as provided by law. A recent amendment to the law, presented by Representative John T. Hansen, provides, however, that “where no central schoolhouse has been built

¹¹⁴ *Acts of the Forty-first General Assembly*, Ch. 88; *Code of 1924*, Secs. 4136, 4144, 4148.

and no bonds issued, no appeal shall be allowed except on the question of the sufficiency of the petition.”¹¹⁵

The law of Iowa provides that the secretary and treasurer of school corporations shall each give bonds to the corporation in such sum as the board may require. Recent legislation upon this point provides, however, that if the bond of an association or corporation as surety is furnished, the reasonable cost of such bond may be paid by the school corporation.¹¹⁶

An ambiguity appears in the *Code of 1924* relative to the time of electing the secretary and treasurer of school corporations. The law provides that “on the same day” the board shall elect a secretary and a treasurer, in case the latter is not elected by the voters. Senator F. C. Gilchrist presented a bill which provides that the words “on the same day” be stricken out and the words “on the first secular day in July” inserted in lieu thereof. The law was further amended to provide that these officers shall qualify within ten days after their election. With these amendments the meaning of the section is clear.¹¹⁷

Section 4081 of the *Code of 1924* relative to the duties of the secretary and treasurer of county high schools is not clearly stated. Accordingly this section has been recodified to read as follows: “The treasurer, in addition to his bond as trustee, shall give a bond as treasurer, in such sum and with such sureties as may be fixed by the board of supervisors, and receive all money from all sources belonging to the funds of the school, and pay them out as directed by the board of trustees, upon orders drawn by the president and countersigned by the secretary; the secretary and the treasurer shall keep an accurate account of all moneys

¹¹⁵ *Acts of the Forty-first General Assembly*, Ch. 85; *Code of 1924*, Sec. 4188.

¹¹⁶ *Acts of the Forty-first General Assembly*, Ch. 84; *Code of 1924*, Sec. 4305.

¹¹⁷ *Acts of the Forty-first General Assembly*, Ch. 83; *Code of 1924*, Sec. 4222.

received and paid out, and at the close of each year, and whenever required by the board, shall make a fully itemized and detailed report.”¹¹⁸

The Iowa law provides that a school board may exclude from school any incorrigible child or any child who in the judgment of the board is so abnormal that his attendance at school will be of no substantial benefit to him. This section of the law has been amended so that children under the age of six years may now be excluded when, in the judgment of the board, such children are not sufficiently mature to be benefited by attending school, although children five years old are of legal school age.¹¹⁹

A former law provided that a school corporation need not hire a teacher for a school in which the average attendance during the last preceding term was less than five, unless it could be shown to the county superintendent that the number of children of school age in the district had increased so that at least ten pupils desired to enroll. This law has now been amended so that seven pupils is a sufficient number to require a continuance of a school.¹²⁰

The board of directors of an independent district, composed wholly or in part of a city acting under a special charter and having a population of fifty thousand or more, may lease, or by a unanimous vote, sell any schoolhouse, school site, or other property acquired for school purposes, when in the opinion of the board such a sale is for the benefit of the district. Before making such a sale the board must advertise for bids for at least two consecutive weeks. It may decline to sell if the bids received are deemed inadequate. This law applies only to the city of Davenport, that

¹¹⁸ *Acts of the Forty-first General Assembly*, Ch. 90.

¹¹⁹ *Acts of the Forty-first General Assembly*, Ch. 86; *Code of 1924*, Secs. 4268, 4270.

¹²⁰ *Acts of the Forty-first General Assembly*, Ch. 82; *Code of 1924*, Sec. 4231.

being the only city in the State operating under a special charter and having a population of fifty thousand.¹²¹

Interest on the permanent school fund of the State is distributed among the several counties on the basis of the number of pupils of school age. The distribution is made by the State Auditor, the number of pupils being certified to by the Superintendent of Public Instruction. In making the distribution for 1925 an error was made relative to the number of pupils in Page County, resulting in a loss to that county of about six hundred and eighty dollars. A law was passed by the Forty-first General Assembly authorizing the Auditor to rectify the mistake and to transfer the sum required to make up the deficit from the permanent school fund to the school fund of Page County.¹²²

The *Code of 1924* provided that no school corporation situated in a county maintaining a county high school should be required to pay the tuition of pupils at any high school other than such county high school. The law stated, however, that this provision should not apply to the tuition of pupils who reside at home while attending such high school. Since pupils who attend schools other than the county high school do so in order that they may reside at home, the exception to the rule in this case practically annuls the law, and the Forty-first General Assembly repealed the entire section.

A further provision of the Code stipulated that in counties having a high school, if a child "resides at home" and attends a high school outside the district of his residence other than the county high school, and the school corporation where the child resides pays the tuition for such child, such corporation shall be entitled to be reimbursed from the county high school fund, if it appears at the end of the

¹²¹ *Acts of the Forty-first General Assembly*, Ch. 89.

¹²² *Acts of the Forty-first General Assembly*, Ch. 204; *Code of 1924*, Sec. 4396.

year that a less number of pupils have attended the county high school from the district where the child resides than were entitled to attend under the county high school apportionment. This law was amended so as to apply in all cases whether the pupil resides at home or not.¹²³

Any school corporation within the State having residing therein deaf children of school age may provide one or more teachers for such children, and the instruction given shall be substantially equivalent to that given other children of corresponding age in the graded school. Any school providing such instruction shall be granted State aid to the extent of twenty dollars a month for each pupil so instructed. The age limit for such pupils was raised from twelve to fourteen years by the Forty-first General Assembly.¹²⁴

SOCIAL LEGISLATION

In November, 1923, Governor N. E. Kendall appointed a committee of nine persons, of which James B. Weaver of Des Moines was chairman, to serve as The Iowa Child Welfare Commission. This Commission was to examine the reports and recommendations of like commissions in other States and the statutes enacted pursuant thereto, relative to the subject of delinquent and dependent children, and to report its findings and submit recommendations to the Governor and to the Forty-first General Assembly. In November, 1924, this Commission submitted its report to the Governor and presented ten legislative measures with the request that they be transmitted to the legislature.

Four of these measures were later introduced in the House by the Committee on the Board of Control, and two

¹²³ *Acts of the Forty-first General Assembly*, Ch. 87; *Code of 1924*, Secs. 4279, 4280.

¹²⁴ *Acts of the Forty-first General Assembly*, Ch. 92; *Code of 1924*, Secs. 4348, 4349.

others were introduced in the Senate by the Committee on Child Welfare. All six of these measures were passed in substantially the form in which they were originally drafted. One of the other bills which was recommended by the Commission was introduced by Representative Volney Diltz of Des Moines, and passed the House by a vote of 87 to 3, but failed to pass the Senate. The six measures which were adopted, however, contain most of the fundamental issues presented by the Commission.

The first of these measures to be considered was one authorizing the Board of Control to arrange for the proper diagnosis, classification, treatment, and disposition of children committed to its guardianship or to institutions under its management; to promote the rehabilitation of disrupted families; to advise with and aid county boards of supervisors in the performance of their duties; to promote the enforcement of laws for delinquent children; to coöperate with juvenile courts and all reputable child-helping and child-placing agencies; and to take the initiative in all matters involving the interest of such children, where adequate provision therefor has not already been made. The Board shall also inquire into the causes of dependency, delinquency, and defectiveness of children and report its findings to the State legislature. It shall have power to appoint a Superintendent of Child Welfare, fix his term of office, and define his duties. Moreover, the Board is authorized to call upon the Iowa Child Welfare Research Station, the Children's Hospital, and other suitable State departments, institutions, and agencies to coöperate in carrying out the purpose of this act.¹²⁵

The *Code of 1924* contains a chapter of twenty-three sections relative to private institutions for neglected, depend-

¹²⁵ *Acts of the Forty-first General Assembly*, Ch. 77; *Report of the Iowa Child Welfare Commission*, 1924, pp. 3, 86-135.

ent, and delinquent children. One of the measures presented by the Iowa Child Welfare Commission and passed by the Forty-first General Assembly repealed eleven of these sections and enacted in lieu thereof a chapter of sixteen sections upon the subject of child-placing agencies. This law authorizes the Board of Control to grant a license for one year to any child-placing agency that is for the public good. It shall be the duty of the Board to provide such general regulations and rules for the conduct of all such agencies as shall be necessary to safeguard the children cared for by such agencies. No person shall conduct a child placing agency without a license, and no license shall be granted except on proof that the person applying for the same is properly equipped to find suitable homes for children and to supervise such homes when children are placed in them. The license of any agency may be revoked at any time for causes which are enumerated in the law.

Moreover, the law provides that each agency shall file with the Board of Control, during the month of January of each year, a report which shall show the number of children cared for during the preceding year, the number of children received for the first time, and the number returned from families, the number placed in homes, the number deceased, the number returned to friends, the number attending school, and such other information as the Board may require.

Further restriction is placed upon agencies relative to the importation of children into the State or exportation of them from the State for the purpose of placing them in homes. After placing a child in a home the agency shall have access at all reasonable times to such child and to the home in which he is living. Either the agency or the Board of Control may demand the return of the child if it is considered necessary for his best interests. The section pro-

viding for inspection and return, however, does not apply to children legally adopted.¹²⁶

Another measure passed in the interest of children was one to regulate children's boarding houses. Under the provisions of this law the State Board of Control is empowered to grant a license for one year for the conduct of any children's boarding home that is for the public good, has adequate equipment for the work it undertakes, and is conducted by a reputable and responsible person. Licenses granted under this act shall be valid for one year from date of issuance, but may be revoked under the conditions and by the procedure specified for the revocation of licenses of child-placing agencies.¹²⁷

In accordance with the recommendation of the Iowa Child Welfare Commission Sections 12658 to 12667 inclusive of the *Code of 1924*, relating to children born out of wedlock, were repealed; and a chapter consisting of thirty-eight sections, under the title of "paternity", has been substituted therefor. Under the provisions of this new law the parents of a child born out of wedlock and not legitimized "owe the child necessary maintenance, education and support". The mother may recover from the father a reasonable share of the necessary support of such child, but not for more than two years preceding the bringing of the action unless a demand has been made in writing. The obligation of the father creates also a cause of action on behalf of the legal representative of the mother, or on behalf of third persons furnishing support or defraying reasonable expenses of such child if his paternity has been judicially established; and if this has been done in the father's life time, or if his paternity has been acknowledged

¹²⁶ *Acts of the Forty-first General Assembly*, Ch. 80; *Code of 1924*, Secs. 3662-3684.

¹²⁷ *Acts of the Forty-first General Assembly*, Ch. 78.

by him in writing, the claim of the illegitimate child for support is enforceable against his estate. The provisions of this law set forth in detail the procedure which shall be followed in action to establish paternity and compel support.¹²⁸

Chapter 113 of the *Code of 1924* relating to maternity hospitals was likewise repealed by the Forty-first General Assembly and a substitute chapter consisting of fifteen sections was enacted. Many of the provisions of the present law are the same as those found in the former legislation. An essential change was made, however, in transferring the supervision of maternity hospitals from the State Department of Health to the Board of Control. Under the new law the Board of Control is empowered to grant a license for one year for the conduct of any maternity hospital that is for the public good, legally located, and conducted by a reputable and responsible person, who is qualified for the work. A license may be revoked at any time under the conditions and procedure specified for the revocation of licenses of child-placing agencies.¹²⁹

To regulate and control the marriage of persons mentally deficient the Iowa Child Welfare Commission presented a measure which was passed by the Forty-first General Assembly. This law provides that the Board of Control shall furnish quarterly to each clerk of the district court lists of all persons who are or have been inmates of the State institutions for the insane or feeble-minded, except those whose competency to marry shall have been established by judicial proceedings or who shall have been discharged from the institution as cured. Further provision is made that no clerk shall issue a marriage license until he has satisfied himself that the name of neither party to the

¹²⁸ *Acts of the Forty-first General Assembly*, Ch. 81.

¹²⁹ *Acts of the Forty-first General Assembly*, Ch. 79.

marriage is contained in the latest list furnished by the Board of Control. This measure together with the five preceding ones constitute the legislative program which resulted from the work of the Iowa Child Welfare Commission.¹³⁰

The Iowa law formerly provided that when application was made to the Board of Control for "release or discharge" of any delinquent child who had been committed by a juvenile court to a State institution, the board should give notice to the judge making the commitment, and the child should not be released or discharged until thirty days after the giving of such notice. The law has now been amended to provide that the notice be given to the county attorney of the county from which the commitment was made, instead of to the judge. Provision is also made that the law shall apply only to cases of "final discharge", and that the Board may at any time parole a child without giving notice.¹³¹

There is an apparent conflict between Sections 5324 and 5331 of the *Code of 1924* relative to support of the poor. Section 5324 provides that no supervisor, trustee, or employee of the county shall be interested, directly or indirectly, in any supplies furnished the poor. Section 5331 provides that in no case shall a trustee or overseer of the poor, draw an order upon himself, unless such trustee or overseer has a contract to furnish supplies. In order to make the law clear on this point, the Forty-first General Assembly repealed the latter section.¹³²

Under the laws of Iowa any blind person of mature years, who is not a charge of any charitable institution, and has not an income of over three hundred dollars per year, and

¹³⁰ *Acts of the Forty-first General Assembly*, Ch. 187.

¹³¹ *Acts of the Forty-first General Assembly*, Ch. 70; *Code of 1924*, Sec. 3650.

¹³² *Acts of the Forty-first General Assembly*, Ch. 103.

who has resided in the State and county a sufficient length of time, may receive as a benefit the sum of three hundred dollars per year from the county or poor fund, to be paid by the board of supervisors. An amendment to this law, introduced by Senator S. E. Fackler, was adopted by the Forty-first General Assembly. According to this amendment if it appears, after the death of any person who has received aid under the provisions of this law, that his estate, after deducting exemptions, exceeds an amount sufficient to pay the expenses of burial and the last sickness, such property shall be charged with the amount paid by the county to such person during his life time. A claim may be filed against the estate by the county for this amount and action for recovery may be brought by the county attorney.¹³³

Another measure of the Forty-first General Assembly dealing with the subject of blind persons was presented by Senator Harry C. White of Vinton and resulted in the creation of a State Commission for the Blind. This Commission shall consist of the Superintendent of the State School for the Blind and two other members to be appointed by the Governor. It shall act as a bureau of information and industrial aid for the blind and aid them in finding employment. It shall maintain a complete register of the blind of the State, assist in marketing products of the blind, visit their homes for the purpose of instruction, make inquiries concerning the causes of blindness, provide vocational training, and discourage begging on the part of the blind within the limits of the State. Reports of the proceedings of this Commission must be made to the Governor annually. An appropriation of twenty thousand dollars was made for carrying this law into effect.¹³⁴

¹³³ *Acts of the Forty-first General Assembly*, Ch. 74; *Code of 1924*, Sec. 5379.

¹³⁴ *Acts of the Forty-first General Assembly*, Ch. 75.

The *Code of 1924* provides that if a convict escapes from the Penitentiary or the Men's Reformatory, the warden may offer a reward of fifty dollars for his apprehension and delivery. Formerly the law provided that this reward must "be paid by the state" but no provision was made for the issue of warrants for payment. A measure passed by the Forty-first General Assembly provided that the Auditor of State shall issue warrants in payment of such rewards, and an appropriation of funds was made sufficient to pay such claims.¹³⁵

The law with regard to marriage provides that after the marriage has been solemnized, the officiating minister or magistrate shall make return of such marriage within fifteen days to the clerk of the district court. Until recently eight items of information were required to be given on this return. Four of these, by a recent amendment to the law, have been eliminated: the number and date of the license; the name of the person making affidavit relative to the age and qualification of the parties; the name of the person giving consent, in case the parties are minors; and the date of return are no longer required.¹³⁶

In the interest of sanitation the Forty-first General Assembly passed a measure which amended the law relative to coal mines, and provided that the operator of any coal mine, in the operation of which more than twenty persons are employed, shall provide and maintain adequate washing facilities for all employees in and about the mine. This is an additional regulation which has not hitherto been required of mine operators.¹³⁷

A further amendment to the law with regard to mining

¹³⁵ *Acts of the Forty-first General Assembly*, Ch. 76; *Code of 1924*, Sec. 3770.

¹³⁶ *Acts of the Forty-first General Assembly*, Ch. 186; *Code of 1924*, Sec. 10440.

¹³⁷ *Acts of the Forty-first General Assembly*, Ch. 29.

provides that in "charging drill holes with powder or other explosives it shall be unlawful for any miner or other person to use any tamper, scraper, or tool that is not tipped on each end thereof with at least five inches of brass, copper or other non-sparking metal".¹³⁸

Any owner, operator, or person in charge of a gypsum mine shall make or cause to be made an accurate map or plan of such mine. The *Code of 1924* stipulates that for the underground workings this plan or map shall show all shafts, slopes, tunnels, or other opening to the surface or to the workings of a "continuous" mine. In this there is an apparent error. The Forty-first General Assembly passed a law substituting the word "contiguous" for the word "continuous", thus restoring the meaning that was evidently originally intended.¹³⁹

The law regarding the operation of freight and passenger elevators has hitherto not been specifically set forth. Provision was made that such elevators should be operated only in compliance with a standard code of rules and regulations which should be adopted by a conference board appointed by the Governor; but the provisions of such code were not set forth in the law. An amendment presented by Senator T. C. Cessna was adopted, however, so that instead of the general provisions of the law, definite standards of equipment are now specified. The present law provides that "hoistway doors and gates of all passenger elevators shall be equipped with an approved interlock (locking device) . . . which will prevent the normal operation of the elevator car; unless the hoistway door at which the car is standing is closed and locked; or unless all hoistway doors are closed and locked; and second, shall prevent opening the hoistway door from the landing side except by

¹³⁸ *Acts of the Forty-first General Assembly*, Ch. 30.

¹³⁹ *Acts of the Forty-first General Assembly*, Ch. 28; *Code of 1924*, Sec. 1352.

a key or special mechanism; unless the car is standing at the landing door; or unless the car is coasting past the landing with its operative device in the 'Stop' position'.¹⁴⁰

For the protection and safety of firemen, engineers, and other employees of steam railroads, Representative Marion R. McCaulley presented to the Forty-first General Assembly a bill which became a law. According to this statute all steam railroads operating locomotive engines within the State shall equip each engine with an automatic door to the fire box, which shall be controlled by steam, compressed air, or electricity so that it may be operated by the fireman by means of a push button or other appliance located in the floor of the engine deck, to enable the fireman while firing the engine to open the door by foot pressure. Failure to comply with this law renders the company liable to a fine.¹⁴¹

The laws of Iowa relative to workmen's compensation presume that every employer has elected to provide insurance in accordance with the compensation law. As a matter of fact, this law is optional, and may be rejected by any employer upon the giving of due notice. The rejection of the law, however, involves the assumption of common law liabilities. The law formerly provided that when an employer had not rejected the terms of the law by posting and filing notice, but had failed to provide insurance as provided by law, then an employee who is injured shall have the right to elect compensation as provided by the workmen's compensation law or collect damages at common law as modified by the Iowa statute. This law as amended by the Forty-first General Assembly virtually takes away the employer's option. It provides that when any employer has more than five persons employed in hazardous employ-

¹⁴⁰ *Acts of the Forty-first General Assembly*, Ch. 31; *Code of 1924*, Secs. 1679, 1680, 1681, 1682, 1684, 6753.

¹⁴¹ *Acts of the Forty-first General Assembly*, Ch. 156.

ment and has elected to reject the compensation provisions of the law, or has failed to insure his liability without definitely rejecting the law, then any employee who has not rejected the provisions of the law and who has a cause of action may collect compensation as provided under the compensation law, or sue for damages at common law as modified by statute.¹⁴²

The law relative to State employment bureaus was amended by adding a provision that no person, firm, or corporation conducting an employment agency shall charge a fee in excess of five per cent of the wages offered for the first month of employment. This law does not apply, however, to any profession for which a license or certificate to engage therein is required by the laws of the State. Further provision is made that no agency shall send an application for employment to an employer who has not applied for help or labor. Nor shall any agency fraudulently promise or deceive any applicant with regard to the service or employment to be rendered by the agency.¹⁴³

Another act passed by the Forty-first General Assembly which may be considered as social legislation is one which provides that the board of supervisors of the several counties of the State shall appropriate each year from the general fund or from the soldiers' relief fund a sum sufficient to pay for the care and maintenance of graves of deceased soldiers and sailors, in all cases in which provision for such care is not otherwise made.¹⁴⁴

LIQUOR LEGISLATION

Eight measures were passed by the Forty-first General Assembly dealing with the subject of intoxicating liquors.

¹⁴² *Acts of the Forty-first General Assembly*, Ch. 162; *Code of 1924*, Sec. 1479.

¹⁴³ *Acts of the Forty-first General Assembly*, Ch. 39.

¹⁴⁴ *Acts of the Forty-first General Assembly*, Ch. 94.

Seven of these were introduced by Senator E. W. Romkey of Burlington and the other by the House Committee on Suppression of Intemperance. Section 1924 of the Code prohibits the manufacture, sale, or keeping for sale of intoxicating liquors. Chapter 45 of the *Acts of the Forty-first General Assembly* amended this section so as to make it an offense for one to have in his possession any intoxicating liquor.¹⁴⁵ Chapter 44 also amended this section by providing that any "manufactured or compounded article, mixture or substance, not in a liquid form, and containing alcohol which may be converted into a beverage by a process of pressing or straining the alcohol therefrom", shall be included in the list of liquors, the manufacture, sale, or possession of which is prohibited.¹⁴⁶ This latter measure has been referred to as the "canned heat" bill.

Another measure adopted by the General Assembly provides that in any action for maintaining a liquor nuisance, for bootlegging, or for the illegal transportation of liquor, the finding of intoxicating liquor, or utensils for the manufacture or transportation of the same, in the possession of the defendant shall be prima facie evidence of his guilt of the offense charged. But the possessor of liquor may set up as a defense that he was in lawful possession of it.¹⁴⁷

The subject of evidence as it applies to the enforcement of liquor legislation was dealt with in another measure which provided that the destruction of, or the attempt to destroy any liquid in the presence of peace officers or while property is being searched shall be prima facie evidence that the liquid was intoxicating liquor and intended for unlawful purposes.¹⁴⁸

¹⁴⁵ *Acts of the Forty-first General Assembly*, Ch. 45.

¹⁴⁶ *Acts of the Forty-first General Assembly*, Ch. 44.

¹⁴⁷ *Acts of the Forty-first General Assembly*, Ch. 42.

¹⁴⁸ *Acts of the Forty-first General Assembly*, Ch. 43.

Sections 1927 and 1930 of the *Code of 1924*, dealing with bootlegging and liquor nuisances respectively, provide for a fine or imprisonment in the county jail or both fine and imprisonment in case of a violation of the law. These sections were so amended as to impose both the penalty of fine and imprisonment, thus increasing the punishment for the violation of these sections of the law.¹⁴⁹

Section 2023 of the *Code of 1924* relative to attorney fees was repealed and a substitute measure enacted, which provided that in case the plaintiff is successful in a prosecution for keeping a liquor nuisance or in an action to enjoin and restrain a bootlegger an attorney's fee of \$25.00 shall be assessed against the defendant as a part of the costs of the case.¹⁵⁰

Section 1936 of the *Code of 1924* provides that it shall be unlawful for common carriers or other persons to carry intoxicating liquors which are not properly labeled. This section was amended so as to set forth more clearly the law relative to labeling legal shipments of intoxicating liquors.¹⁵¹

Patent medicines, extracts, perfumes, and other commodities, none of which are susceptible of use as a beverage but which require alcohol or vinous liquors, as one of their ingredients, may be manufactured within the State, provided a permit to manufacture such commodity is first obtained. It is the duty of the clerk of the district court to keep a record of all such permits. A recent amendment provides that it shall be the duty of any manufacturer holding a permit, whenever he shall purchase any intoxicating liquor from any person or firm, to file an affidavit with the county auditor immediately upon receipt of the

¹⁴⁹ *Acts of the Forty-first General Assembly*, Ch. 46.

¹⁵⁰ *Acts of the Forty-first General Assembly*, Ch. 48.

¹⁵¹ *Acts of the Forty-first General Assembly*, Ch. 47.

shipment of such liquor, setting forth the material facts. The form of such an affidavit is prescribed by the law.¹⁵²

PUBLIC HEALTH

At least five measures were passed by the Forty-first General Assembly which deal directly with the promotion and conservation of health. Section 5353 of the *Code of 1924* provides that in counties where it has been agreed to establish a public county hospital the board of supervisors may authorize a tax levy of not to exceed two mills in any one year for the building of such hospital and two mills for its improvement and maintenance. In accordance with a measure introduced by Senator William J. Goodwin this provision of the law was amended to allow a tax of not to exceed five mills for improvement and maintenance in counties having a population of one hundred and thirty-five thousand or more. This amendment to the law further extends the powers of the hospital trustees and authorizes a consolidation of the various hospital services of the county under one management. Moreover, in cities of one hundred and twenty-five thousand or over, where there is a consolidation of the city hospital with the public county hospital, the former property may be sold. The funds received from such sale shall be used first for the payment of any balance remaining due on the purchase price, and the remainder shall be turned into the county public hospital fund. Although this law is general in terms it applies only to Polk County and Des Moines.¹⁵³

In the interest of pure food a measure was passed modifying the law with regard to the pasteurization of milk. The law formerly provided that every owner, manager, or

¹⁵² *Acts of the Forty-first General Assembly*, Ch. 49, *Code of 1924*, Secs. 2164, 2169.

¹⁵³ *Acts of the Forty-first General Assembly*, Ch. 97; *Code of 1924*, Sec. 5353.

operator of a creamery should, before delivering to any person any skimmed milk or buttermilk, cause the cream or milk from which the same was derived to be pasteurized. This law now applies also to persons engaged in the manufacture and sale of ice cream. Moreover the law defines clearly what is meant by the term "pasteurization" and requires that the owners of a creamery or ice cream factory shall equip each vat or pasteurizer with an "accurate recording thermometer" to be used in the pasteurization.¹⁵⁴

Another measure provided that "oleomargarine, butterine or other products made in the imitation or semblance of natural butter produced from milk or cream or both, shall not be used as a food in the college for the blind, the school for the deaf, or any state institution under the management of the board of control".¹⁵⁵

A law was also passed relative to the sale of narcotics. In defining the term "narcotic drugs" the Code formerly included opium, coco, cocain, alpha or beta eucaine, morphine, heroin, and Indian hemp as being drugs, the sale of which is prohibited, except in strict compliance with the law. To this list of drugs "peyote or the mescale button", a variety of cactus grown in southwestern United States and Mexico, containing a narcotic substance from which liquor may be distilled, has now been added.¹⁵⁶

The Department of Health may upon its own initiative investigate the alleged pollution or corruption of any stream or body of water which is rendering the same unwholesome or unfit for domestic use. Representative S. L. Graham presented to the Forty-first General Assembly an amendment to the law which provides that, after a full and complete investigation "including bacteriological and chem-

¹⁵⁴ *Acts of the Forty-first General Assembly*, Ch. 60; *Code of 1924*, Sec. 3076.

¹⁵⁵ *Acts of the Forty-first General Assembly*, Ch. 66.

¹⁵⁶ *Acts of the Forty-first General Assembly*, Ch. 52; *Code of 1924*, Sec. 3151.

ical analysis of the water'' and location of the source of contamination, the Department shall make an order fixing a time for a public hearing with regard to the subject. After a hearing, the Department may order a change in the method of passing waste materials into the water so that the same will be rendered innocuous and harmless. Provision is made, however, that "no order" shall be issued under the provisions of this section that will require the expenditure of more than five thousand dollars (\$5,000.00) without the written approval of a majority of the members of the State Executive Council.¹⁵⁷

FISH AND GAME

In accordance with an act of Congress approved on June 7, 1924, the Forty-first General Assembly of Iowa passed an act which authorized the United States to acquire from the State of Iowa such areas of land and water within the State as it may deem necessary for the establishment of the "Upper Mississippi River Wild Life and Fish Refuge", provided the States of Illinois, Wisconsin, and Minnesota grant a like consent. Any acquisition by the government of the United States under the provisions of this law must, however, be first approved by the State Board of Conservation, the State Game Warden, and the Executive Council. Permission was also given the United States government to use for the same purpose any overflow lands within the State which are not being used for agricultural purposes, fish hatcheries, or salvaging stations.¹⁵⁸

The State Game Warden in Iowa is authorized by law to establish and control State hatcheries and game farms, which are to be used for the purpose of stocking the waters of the State with fish and the natural covers with game

¹⁵⁷ *Acts of the Forty-first General Assembly*, Ch. 50; *Code of 1924*, Secs. 2199, 2201.

¹⁵⁸ *Acts of the Forty-first General Assembly*, Ch. 1.

birds. The law upon this subject was recently supplemented by adding a provision that whenever any land, stream, or lake has been taken for public park purposes, or where any land is now owned and used by the State of Iowa, the State Game Warden shall have the right and power to establish State game refuges or sanctuaries on such land if it is suitable for that purpose. Moreover, it shall be unlawful to hunt or trap or kill any wild animal or bird on any State game refuge so established, at any time of the year, or to carry firearms thereon, providing, however, that predatory birds and animals may be killed or trapped under the authority and direction of the State Game Warden.¹⁵⁹

Under a previous provision of the law the State Game Warden was required to make a monthly report to the State Board of Audit, in which he set forth a statement of all moneys received and expended, and for what purpose, together with the balance of cash on hand in each separate fund. This report also designated the number and varieties of fish which had been distributed and in what waters they had been placed. An act of the Forty-first General Assembly repealed this section of the law and such a statement or report is no longer required.¹⁶⁰

The State Game Warden is authorized to enter into contract with persons interested, for the taking from the waters of the State, by seine or net, certain varieties of fish, including buffalo, carp, quillback, redhorse, and others. To this list has recently been added the "sheepshead". Provision is made, however, that sheepshead which are less than ten inches in length may not be taken from the Mississippi or Missouri rivers. Under the provisions of the former law no person was allowed to kill or have in his

¹⁵⁹ *Acts of the Forty-first General Assembly*, Ch. 32; *Code of 1924*, Sec. 1709.

¹⁶⁰ *Acts of the Forty-first General Assembly*, Ch. 33; *Code of 1924*, Sec. 1711.

possession sunfish less than six inches in length. This restriction has been modified so as to apply only to sunfish less than four inches in length.¹⁶¹

The laws of the State provide that no male person over the age of eighteen years shall fish in the stocked meandered lakes of the State without first procuring a fishing license. This law has now been extended so as to make it unlawful for any non-resident to fish in any water of the State without procuring such a license.¹⁶²

Section 1766 of the *Code of 1924* designates the closed season for the hunting or trapping of certain fur-bearing animals, and makes it unlawful for any person to have in his possession during the closed season, except during the first ten days thereof, any of the animals or skins described in the section, "whether lawfully or unlawfully taken within or without this state". This law was amended to provide that no person shall be convicted of having any such animal or skin in his possession during the closed season if it can be shown that the article was received into his possession lawfully, or that during the first ten days of the closed season or within ten days of the date he received such article he filed with the county auditor an affidavit, giving a list of the articles in his possession, the manner in which they were obtained, and a description of the premises where they are kept. The purpose of this measure is to allow persons in lawful possession of fur-bearing animals to retain possession of them during the closed season.¹⁶³

This section of the law was also amended by another bill which makes it unlawful for any person to kill, trap, or ensnare any muskrat from October 15, 1925, to October 15,

¹⁶¹ *Acts of the Forty-first General Assembly*, Ch. 35; *Code of 1924*, Secs. 1733, 1745, 1751.

¹⁶² *Acts of the Forty-first General Assembly*, Ch. 34; *Code of 1924*, Sec. 1719.

¹⁶³ *Acts of the Forty-first General Assembly*, Ch. 37.

1928, thus making a closed season of three full years with regard to this animal.¹⁶⁴

The closed season for the killing or taking of different species of birds is designated by law, and varies with different kinds of birds. Formerly the law provided that in case of the Mongolian, ring-neck, English, or Chinese pheasants the closed season should continue throughout the entire year. A bill passed by the Forty-first General Assembly authorizes the State Game Warden, upon a petition being presented by one hundred and fifty farmers and landowners of a county, to declare an open season for these birds in this county of such duration as he may deem best. During such a period it shall be lawful to kill not to exceed twelve birds per day. Notice of the open season shall be published in one of the official newspapers of the county. The Game Warden is also authorized to offer a bounty of one dollar for each bird captured and delivered alive to him. All birds thus captured shall be distributed to such other parts of the State as the Warden may determine. These birds are becoming quite numerous in northwestern Iowa, but are not found in the southern part of the State. The purpose of the law is to limit their increase where they are becoming too numerous and to secure a wider distribution of them throughout other sections of the State.¹⁶⁵

AGRICULTURE AND ANIMAL HUSBANDRY

Two measures relative to the eradication of bovine tuberculosis were passed by the Forty-first General Assembly. One of these measures provided for the amendment of eight sections of the *Code of 1924*. The law as amended provides that when fifty-one per cent of the owners of breeding cattle in any county desire to establish a county area eradi-

¹⁶⁴ *Acts of the Forty-first General Assembly*, Ch. 36.

¹⁶⁵ *Acts of the Forty-first General Assembly*, Ch. 38; *Code of 1924*, Sec. 1767.

cation plan, such persons may petition the board of supervisors, who shall in turn publish notice of a date of hearing upon the petition. If no objections are filed, or if the petition is found sufficient, the board shall make application to the Secretary of Agriculture for the enrollment of the county under such plan; and it shall be the duty of the Secretary to make the enrollment accordingly. The area once organized, it becomes the duty of the county auditor to make a report to the Secretary of Agriculture not later than July fifteenth of each year, showing the amount of money in the tuberculosis eradication fund on July first. When the funds given by the Department of Agriculture are exhausted, county funds become available.

Whenever seventy-five per cent of the owners of breeding cattle in any county operating under the county area plan shall have signed an agreement with the Department of Agriculture, notice shall be given of a hearing relative to the establishment of an "accredited area plan". If objections are filed, the Secretary shall allow a hearing and determine whether or not the county shall become an accredited area. If the petition is found sufficient the Secretary shall make an entry of record establishing such a district and notify the supervisors of his action. Thereafter every owner of breeding cattle within the county shall cause his cattle to be tested for tuberculosis and shall comply with all requirements for the "establishment and maintenance of a tuberculosis free accredited herd." Any owner of breeding cattle in a county which has been enrolled under the accredited area plan who "prevents, hinders, obstructs or refuses to allow" a veterinarian authorized by the Department of Agriculture to conduct a test for tuberculosis shall be deemed guilty of a misdemeanor.¹⁶⁶

¹⁶⁶ *Acts of the Forty-first General Assembly*, Ch. 54; *Code of 1924*, Secs. 2684, 2688, 2690, 2691, 2694, 2700, 2701.

Another law relative to bovine tuberculosis, as it was amended by the Forty-first General Assembly, provides that when breeding animals are slaughtered following any test there shall be deducted from their appraised value "the proceeds from the sale of salvage. When breeding animals are slaughtered following a first test under this chapter, there shall also be deducted five per cent of the appraised value of the breeding animal tested." The State then pays the owner one-third of the sum remaining after the above deductions are made, but in no case shall the State pay the owner a sum in excess of fifty dollars for any animal.¹⁶⁷

The Iowa Department of Agriculture is authorized to make all necessary rules for the suppression and prevention of infectious or contagious diseases among animals within the State. For the purpose of this law the term "infectious and contagious diseases" has hitherto been deemed to embrace "glanders, farcy, maladie du coit (dourine), anthrax, foot and mouth disease, scabies, hog cholera, necrotic enteritis, or tuberculosis". This list has now been extended to include "any other communicable disease so designated by the department", thus giving the Department of Agriculture authority to make rules for the suppression of any communicable disease which may develop among animals of the State.¹⁶⁸

State aid is given to poultry associations which comply with certain rules and regulations as specified by law. The association must be composed of at least fifteen bona fide poultry raisers or dealers in poultry residing in any one county, and membership must be open to all persons on an equal basis. It must have a president, secretary, treasurer, and board of directors, and have an annual income and expenditure of at least one hundred dollars, exclusive of

¹⁶⁷ *Acts of the Forty-first General Assembly*, Ch. 55; *Code of 1924*, Sec. 2671.

¹⁶⁸ *Acts of the Forty-first General Assembly*, Ch. 53; *Code of 1924*, Sec. 2644.

State aid. The association must notify the Department of Agriculture on or before the second Wednesday in December of its intention to hold a poultry show, and on or before June first of each year file with the Department a sworn statement showing compliance with the foregoing regulations. An annual State-wide poultry show may also be held, if other requirements are met and the association has an annual income of five hundred dollars in cash, exclusive of State aid.¹⁶⁹

The State Horticultural Society, which is maintained in connection with the State Department of Agriculture, receives State aid for its maintenance and support. Representative L. V. Carter presented to the Forty-first General Assembly a bill which provides that all money appropriated for the use of this Society shall be paid on the warrant of the Auditor of State, upon the order of the president and secretary of the Society, in such sums and at such times as may be for the best interests of the Society. All expenditures from the State funds for the use of this Society are to be approved by the Secretary of the State Department of Agriculture.¹⁷⁰

It is the duty of the State Apiarist to give lectures and demonstrations in the State upon the care of bees and the production and sale of honey. A recent amendment to the law upon this subject, presented by Representative John M. Bixler of Adams County, provides that the State Apiarist or his assistants shall for the purposes of inspection have the right to enter any premises, inclosure, or building containing bees or bee supplies. In case diseased bees are found the State Apiarist shall issue instructions for the best method of treating such disease. If the owner

¹⁶⁹ *Acts of the Forty-first General Assembly*, Ch. 59; *Code of 1924*, Secs. 2954, 2960.

¹⁷⁰ *Acts of the Forty-first General Assembly*, Ch. 65.

fails to follow instructions relative to such treatment, the State Apiarist or his assistants may provide treatment and assess the costs against the owner. Such assessment shall then be collected by the county treasurer in the same manner as other taxes.

The State Apiarist shall issue regulations prohibiting the transportation without his permit of any bees or used beekeeping appliances into any area free of bee diseases. Any one who interferes with the State Apiarist or his assistants in the performance of their duties or who refuses to permit the examination of bees shall be deemed guilty of a misdemeanor, and shall be liable to punishment by fine or imprisonment.¹⁷¹

It is the duty of the owner or person in control of land to cut, burn, or otherwise destroy all noxious weeds growing on such land. For the purposes of this law the term "noxious weeds" has formerly included a large number of plants, among which are the following: quack grass, Canada thistles, cockleburrs, wild mustard, sour dock, and Russian thistles. To this list the "wild sunflower" has now been added.¹⁷²

DRAINAGE

Chapter 153 of the laws of the Forty-first General Assembly amended the law relative to drainage by providing for the establishment and maintenance of settling basins. In order to make the desired amendment it was necessary to amend twenty-one sections of the Code, inserting some provisions relative to settling basins in each of the amended sections. The first section amended provides that the board of supervisors of any county shall have jurisdiction and power to establish a "drainage district or districts, and to

¹⁷¹ *Acts of the Forty-first General Assembly*, Ch. 63; *Code of 1924*, Secs. 4037, 4039, 4041.

¹⁷² *Acts of the Forty-first General Assembly*, Ch. 64; *Code of 1924*, Sec. 4818.

locate and establish levees, and cause to be constructed as hereafter provided any levee, ditch, drain, or watercourse". To this list of improvements the recent law adds "or settling basins in connection therewith". Other sections throughout the drainage law were amended in much the same manner. Section 22 of the new law does not amend any section of the Code but provides: "If a settling basin or basins are provided as a part of a drainage improvement, the board of supervisors may buy or lease the necessary lands in lieu of condemning said lands." For several years drainage districts with pumping stations have been empowered to establish settling basins and to secure the right of way to them. The new law allows any district to establish, construct, and maintain settling basins where necessary.¹⁷³

The law of Iowa provides that if any levy of assessments for drainage improvement is not sufficient to meet the interest and principal of outstanding bonds, additional assessments may be made when necessary to complete full payment for improvements. To these provisions has been added the following: "Drainage districts may settle, adjust, renew or extend the time of payment of the legal indebtedness they may have, or any part thereof, in the sum of one thousand dollars (\$1000.00) or upwards, whether evidenced by bonds, warrants, certificates or judgments, and may fund or refund the same and issue bonds therefor in the manner provided" by law.¹⁷⁴

Provision is made in the law for the establishment of inter-county levee and drainage districts. The Forty-first General Assembly amended this law by adding a provision that whenever one or more drainage districts in one county

¹⁷³ *Acts of the Forty-first General Assembly*, Ch. 153; *Iowa Applied History*, Vol. IV, p. 571.

¹⁷⁴ *Acts of the Forty-first General Assembly*, Ch. 154; *Code of 1924*, Sec. 7509.

outlet into a ditch, drain, or natural watercourse which is the common carrying outlet for one or more drainage districts in another county, the boards of supervisors of such counties acting jointly may initiate proceedings for the establishment of an inter-county drainage district.

No land and no previously organized drainage district shall be included within, or assessed for, the proposed new inter-county district unless such land or such previously organized district shall receive special benefits from the improvements in the proposed new inter-county district and any landowner affected by the establishment of the new inter-county district may appeal to the district court of the county where the land lies from the action of the joint boards in establishing the new district or including his land within it.¹⁷⁵

HIGHWAYS

The agitation for good roads in Iowa has given rise to recent extensive and important legislation on the subject of highways. The *Code of 1924* provides that primary roads outside of towns shall be maintained by the board of supervisors under the patrol system as provided by law. Under the new law the Highway Commission is given general authority and supervision over the maintenance of primary roads outside of cities and towns and along the corporate limits thereof, and is directed to coöperate with the various boards of supervisors. In case of a disagreement as to policy, the decision of the Commission shall be final. In accordance with the change of supervisory power, road machinery purchased by any county out of the primary road fund and used by any county for maintaining primary roads shall be available for use by the Highway Commission in maintaining the primary roads of the county. Further

¹⁷⁵ *Acts of the Forty-first General Assembly*, Ch. 155; *Code of 1924*, Sec. 7600.

provision is made whereby the Federal aid road fund and an amount equal to the amount received from the Federal government as road aid during the year shall be set aside to constitute a primary road development fund, to be expended under the direction of the Highway Commission. Restrictions are placed upon the expenditure of this fund. The purpose of this measure is to give the Highway Commission more complete authority over the control and maintenance of primary roads and thus to coördinate the State law with the Federal aid requirements.¹⁷⁶

If any county desires to hasten the grading or hard surfacing of the primary roads of the county at a more rapid rate than would be accomplished by merely employing its annual allotted portion of the primary road fund, the board of supervisors may submit to the voters the proposition of issuing bonds for road improvement. If the majority of the voters agree, the supervisors may issue bonds to carry on the work. A new provision of the law presented by Senator H. E. Dean provides that the supervisors may at any time refund at a lower rate of interest primary road bonds upon which payment has become optional, and may likewise refund unmatured primary road bonds if the owner consents. "Any refunding bonds and the interest accruing thereon shall be payable from the same funds from which the original bonds and the interest thereon were payable."¹⁷⁷

With regard to inter-county highways the law provides that the board of supervisors of adjoining counties shall, subject to the approval of the State Highway Commission, adopt plans and specifications for road, bridge, and culvert

¹⁷⁶ *Acts of the Forty-first General Assembly*, Ch. 114; *Code of 1924*, Secs. 4736, 4738.

¹⁷⁷ *Acts of the Forty-first General Assembly*, Ch. 113; *Code of 1924*, Secs. 4720, 4721.

construction, reconstruction, and repair. In case the boards fail to perform such duty or fail to agree, the Highway Commission shall set a time and place for hearing and shall determine what should be done and such decision shall be final. To this law the Forty-first General Assembly added the provisions that if the boards or either of them shall, for a period of sixty days, fail to comply with the decision, the Commission shall proceed with the work — the same to be paid for by the county affected. If the improvement be on a primary road the bills shall be paid out of the primary road fund allotments of the county. If it be for a county road, or a county bridge on a township road, the bills shall be forwarded to the county auditor who shall draw warrants, and the county treasurer shall pay them the same as other county warrants.¹⁷⁸

A slight amendment has been made to the law relative to condemning of land for street improvements within cities and towns. The *Code of 1924* provides that the “board of Supervisors is hereby given plenary jurisdiction subject to the approval of the council to purchase or condemn right of way therefor and grade, drain, gravel, or hard surface any road or street which is a continuation of the primary road system of the county” within a city or town. This was amended by inserting the word “bridge” after the word “drain”, thus making the law applicable in case of bridge construction as well as to other forms of improvements.¹⁷⁹

A board of apportionment, consisting of three resident freeholders of the county, shall be appointed by the board of supervisors to apportion all special benefits to real estate in assessment districts, resulting from the improvement of the primary and secondary road system. When the appor-

¹⁷⁸ *Acts of the Forty-first General Assembly*, Ch. 112; *Code of 1924*, Secs. 4661, 4662.

¹⁷⁹ *Acts of the Forty-first General Assembly*, Ch. 111; *Code of 1924*, Sec. 4731.

tionment has been made, the county auditor shall fix a day for a hearing before the board of supervisors, and cause notice of such hearing to be published. The *Code of 1924* provided that publication of such notice should appear in "at least one of the official newspapers of the county". This has been amended to read in "a newspaper of the county having general circulation in the district affected by the improvement". Thus the notice may legally appear in a newspaper which has not been designated as official.¹⁸⁰

The board of supervisors, county engineer, or other persons employed by the board may, in accordance with a measure introduced by Representative George L. Venard, after giving written notice to the owner and the person in possession, enter upon any land for the purposes of prospecting for gravel to be used for the improvement of highways. Surveys may be run and excavations or borings may be made upon such land. Any damage caused thereby shall be paid by the county — the amount of damage being determined in the manner provided for the awarding of damages in condemnation of land for the establishment of highways. No such prospecting shall be done, however, within twenty rods of a dwelling house or buildings without written consent of the owner.¹⁸¹

This measure was passed without a publication clause, in the absence of which it would normally become effective on July 4, 1925. It was desired, however, to have the provisions of the law become operative before that date, and accordingly a joint resolution was passed supplying the publication clause, and declaring that the law should become effective upon publication.¹⁸²

¹⁸⁰ *Acts of the Forty-first General Assembly*, Ch. 109; *Code of 1924*, Sec. 4707.

¹⁸¹ *Acts of the Forty-first General Assembly*, Ch. 108.

¹⁸² *Acts of the Forty-first General Assembly*, Ch. 284; *Constitution of Iowa*, Art. III, Sec. 26.

In the interest of safety and to prevent accidents at intersections of railroads and highways a law was passed by the Forty-first General Assembly which provides that if any person engaged in the dragging of a public highway or private way across a railroad shall cause to be deposited any dirt, gravel, stone, or other substance upon the rails of such railroad, or in such close proximity thereto that it interferes with or jeopardizes the operation of trains he shall be subject to a fine of not less than twenty-five dollars.¹⁸³

MOTOR VEHICLES

At least twelve laws were passed by the Forty-first General Assembly dealing directly with the subject of motor vehicles. Aside from these, a gasoline license fee law was passed, which affects the operation of motor vehicles, but which because of its fundamental character as a tax is discussed under the subject of taxation. Two of the measures passed were for the regulation of motor vehicle carriers. Both of these were introduced by the Committee on Motor Vehicles and resulted in a clarifying of the law upon this subject. One provides for the repeal of Chapter 252 of the *Code of 1924*, which deals with that subject, and enacts a new measure which defines motor carriers, and provides for the levy and collection of a tax to be paid by motor carriers for the maintenance and repair of highways.

This law provides that in addition to the regular license fees or taxes imposed upon motor vehicles there shall be assessed against and collected from every motor carrier a tax of one-fourth cent per ton-mile of travel in operating a vehicle having pneumatic tires, and one-half cent per ton-mile for vehicles having hard rubber tires. The method of computing this tax is designated by law, and the Board of

¹⁸³ *Acts of the Forty-first General Assembly*, Ch. 110.

Railroad Commissioners is charged with its collection. The funds thus obtained shall be used by the county board of supervisors for the maintenance of highways over which motor carriers operate.¹⁸⁴

The second measure dealing with motor carriers provides for the supervision and regulation by the State Board of Railroad Commissioners of persons engaged in the public transportation of persons or property by motor vehicles, if a charge is made. It is unlawful for any motor carrier to operate or furnish public service within the State without first having obtained from the Commissioners a certificate declaring that public convenience and necessity require such operation. Such certificate is issued only upon a strict compliance with requirements designated by law and may be cancelled at any time for a violation of such regulations.¹⁸⁵

In the interest of law enforcement with regard to the operation of motor vehicles a law was passed by the Forty-first General Assembly which provides that special agents or inspectors employed in the Motor Vehicle Department and working under the supervision of the Secretary of State shall be clothed with authority as peace officers and shall qualify as such by filing a bond in the sum of five thousand dollars.¹⁸⁶

Another measure of a somewhat similar character provides that it shall be the duty of all sheriffs and the chiefs of police of all cities, including cities acting under special charters, to report promptly to the Bureau of Criminal Investigation all thefts of motor vehicles coming to their attention and the recovery of motor vehicles previously stolen. The bureau shall publish a list of motor vehicles

¹⁸⁴ *Acts of the Forty-first General Assembly*, Ch. 4.

¹⁸⁵ *Acts of the Forty-first General Assembly*, Ch. 5.

¹⁸⁶ *Acts of the Forty-first General Assembly*, Ch. 7.

reported stolen or recovered and shall send a copy of such list to each chief of police and each sheriff in the State, and to the motor vehicle department of each of the several States.¹⁸⁷

All the other acts passed in 1925 relative to motor vehicles are amendatory to previously enacted statutes on that subject. The term "motor vehicle" as defined by the Code has been given a new and more comprehensive meaning. Under the general provisions of the law the term did not include "fire wagons and engines, police patrols, city and town ambulances, city and government vehicles, clearly marked as such". As redefined by the Forty-first General Assembly the term "motor vehicles" includes "all vehicles propelled by any power other than muscular power except traction engines, road rollers, and such vehicles as are run only upon tracks or rails." Thus the fact that a vehicle is used by a fire department or for patrol purposes or is owned by a city or town does not exempt it from the provisions of the motor vehicle law.¹⁸⁸

Under a former provision of the law it was the duty of the Executive Council to fix the value and weight of motor vehicles, upon which the annual license fees were based. This service has now been transferred to the Motor Vehicle Department of the office of the Secretary of State. The annual fee charged for all motor vehicles, except motor trucks and motorcycles, shall be equal to one per cent of the value as fixed by the Department, plus forty cents for each one hundred pounds or fraction thereof of the weight of the vehicle as fixed by the Department. A recent amendment to this provision, however, stipulates that when the license fee, thus computed, totals a fraction over a certain number of dollars, the fraction shall not be computed in arriving at

¹⁸⁷ *Acts of the Forty-first General Assembly*, Ch. 8.

¹⁸⁸ *Acts of the Forty-first General Assembly*, Ch. 9; *Code of 1924*, Sec. 4863.

the fee. A new schedule of license fees for motor trucks was adopted by the Forty-first General Assembly resulting in a material increase in the fee charges, especially in the case of the larger trucks or trucks equipped with solid tires. Thus the license fee for a six-ton truck equipped with solid rubber tires was increased from \$175 to \$350 a year.¹⁸⁹

Section 4992 of the *Code of 1924* provides that local authorities shall have power to enact ordinances and regulations relative to motor vehicles, and to provide for traffic or crossing officers or devices to bring about the orderly passage of vehicles and other users of the public highways "on certain portions thereof, where the traffic is heavy and continuous." In like manner a later section of the law stipulates that city authorities may designate by ordinance conditions under which vehicles may be parked in public streets or alleys "during the hours of darkness." Both of these sections have been amended. In the former case the words following "highways" were stricken out, thus making the law applicable to all highways and not merely to those where traffic is heavy and continuous. In the latter case the words "during the hours of darkness" was stricken out and local authorities may now regulate parking and traffic, day or night.¹⁹⁰

Moneys collected under the provisions of the motor vehicle law shall be credited by the Treasurer of the State to the following funds: two and one-half per cent of the gross fees and penalties to a maintenance fund for the State Highway Commission; three and one-half per cent to a maintenance fund for the Motor Vehicle Department; and the balance, except a small amount for collection and disbursement, to the primary road fund. Of the money thus

¹⁸⁹ *Acts of the Forty-first General Assembly*, Ch. 10; *Code of 1924*, Secs. 4908, 4913, 4914, 4973.

¹⁹⁰ *Acts of the Forty-first General Assembly*, Ch. 11; *Code of 1924*, Sec. 4997.

collected the State Treasurer is required to maintain a balance of not to exceed five hundred thousand dollars. By virtue of a recent amendment to the law this maximum shall be exclusive of the amount in the funds provided for the use of the State Highway Commission and the Motor Vehicle Department.

The county treasurer is required to report to the Motor Vehicle Department on the fifteenth of each month, giving a statement of all fees and penalties received by him during the preceding calendar month. He is also required to forward to the Treasurer of the State a duplicate of such report accompanied by a remittance of six per cent of all fees and penalties received by him, for the use and benefit of the maintenance fund of the State Highway Commission and the Motor Vehicle Department.¹⁹¹

In the interest of safety in driving motor vehicles the law contains a provision that a vehicle passing another from the rear "shall turn to the left and shall not return to such road or path within less than thirty feet of the team or vehicle which has been passed". A recent amendment to this law makes the exception that in passing street cars the vehicle approaching from the rear shall pass to the right in all cases where the condition of the street permits of such passage. The amendment clarifies the law on this point and makes it conform with the general rules prescribed in traffic regulations of cities throughout the State.¹⁹²

In case of a personal injury resulting from the culpability of the operator of a motor vehicle or from an accident, the operator of the vehicle causing the injury is required to report the accident at the office of some peace officer as near as practicable to the site of the accident or to the county

¹⁹¹ *Acts of the Forty-first General Assembly*, Ch. 12; *Code of 1924*, Secs. 4999, 5003, 5013.

¹⁹² *Acts of the Forty-first General Assembly*, Ch. 13; *Code of 1924*, Sec. 5022.

attorney or the sheriff. This law has now been amended to provide that when the accident occurs within the corporate limits of any city of the first class, the accident and all information in connection therewith shall be reported at the office of the chief of police "and when reported elsewhere shall not constitute a compliance with the provisions of this section."¹⁹³

Under Section 5029 of the *Code of 1924*, the maximum speed for motor vehicles of a less weight than three tons and equipped with pneumatic tires was limited on public highways to thirty miles per hour. This has now been increased to thirty-five miles per hour in accordance with a bill introduced by Representative J. H. Johnson.¹⁹⁴

For the enforcement of the motor vehicle regulations, the Code stipulated that a violation of any of the provisions of the chapter relative to that subject should be punished by a fine not exceeding one hundred dollars or by imprisonment not exceeding thirty days, or by both fine and imprisonment. This latter provision has been stricken from the law, the result being that punishment may now consist of either fine or imprisonment, but not both.¹⁹⁵

Another law passed by the Forty-first General Assembly, which is somewhat indirectly connected with the subject of motor vehicles is one introduced by Representative L. B. Forsling which makes it unlawful for any person, copartnership, or corporation to remove or deface or alter the word "rental" or any other word or mark attached to any electric storage battery for the purposes of identification. It shall be "presumptive evidence" of fraud for any person to retain in his possession for a longer period than thirty days, without the consent of the owner, any storage battery

¹⁹³ *Acts of the Forty-first General Assembly*, Ch. 14; *Code of 1924*, Sec. 5073.

¹⁹⁴ *Acts of the Forty-first General Assembly*, Ch. 15.

¹⁹⁵ *Acts of the Forty-first General Assembly*, Ch. 16; *Code of 1924*, Sec. 5089.

upon which has been marked "rental" or other words of identification. A penalty of one hundred dollars, or imprisonment in the county jail for not to exceed thirty days, is prescribed for the violation of this act. The purpose of this measure is to prevent the unlawful taking or retaining of storage batteries used in the operation of motor vehicles, and is designed especially to protect persons engaged in renting and recharging batteries.¹⁹⁶

BUSINESS, TRADE, AND COMMERCE

In the interest of trade and commerce, a law was passed making it unlawful for any person or corporation to engage in or conduct a business under any trade name or any assumed name of any character "other than the true surname of each person or persons owning or having any interest in such business", unless such person or persons shall file with the county recorder a verified statement showing the name and post office address of each person having an interest in the business. A like statement shall be filed in case of a change of ownership. Any person violating the provisions of this law shall be punishable by a fine or imprisonment.¹⁹⁷

Chapter 426 of the *Code of 1924* deals with the subject of bonded warehouses for agricultural products, and requires a license and a bond of persons conducting such a warehouse. Under the provisions of this law the term "agricultural products" is deemed to mean "cotton, wool, grains, tobacco, and flaxseed". To this list was added "sugar and all canned goods made from agricultural products."¹⁹⁸

In connection with the Statute of Frauds, the law of evidence provides that "regulations relating merely to the proof of contracts, shall not prevent the enforcement of

¹⁹⁶ *Acts of the Forty-first General Assembly*, Ch. 17.

¹⁹⁷ *Acts of the Forty-first General Assembly*, Ch. 183.

¹⁹⁸ *Acts of the Forty-first General Assembly*, Ch. 184.

those not denied in the pleadings, except in cases when the contract is sought to be enforced, or damages recovered for the breach thereof, against some person other than him who made it." Moreover, the oral evidence of the maker against whom an unwritten contract is sought to be enforced shall be competent to establish the contract. A measure passed by the Forty-first General Assembly makes these provisions of the law applicable to the sale of personal property.¹⁹⁹

The *Code of 1924* provides that the person offering any commercial feed for sale shall pay a registration fee and present an affidavit relative to the quality of feed offered. It was evidently intended that this registration fee should be paid annually, but the Code did not so stipulate, and the law was amended to provide for its annual payment.²⁰⁰

CORPORATIONS

It is a general rule of the corporation law of Iowa that shares of stock of any corporation organized under the laws of the State shall be assessed to the owners thereof as moneys and credits at the place where its principal business is transacted. There are exceptions to this rule, however, and the *Code of 1924* stipulates that corporations provided for in Chapters 331 to 341 inclusive — banks, insurance companies, telegraph and telephone companies, and transportation companies — shall come within the exception. This law was amended by substituting 330 for 331 in specifying the chapters affected.²⁰¹

The law with regard to non-pecuniary corporations provides that the trustees, directors, or members may, prior to the expiration of the corporate period, reincorporate and

¹⁹⁹ *Acts of the Forty-first General Assembly*, Ch. 185; *Code of 1924*, Secs. 9933, 11287, 11288.

²⁰⁰ *Acts of the Forty-first General Assembly*, Ch. 61; *Code of 1924*, Sec. 3117.

²⁰¹ *Acts of the Forty-first General Assembly*, Ch. 158; *Code of 1924*, Sec. 7008.

all property and rights thereof shall rest in the corporation as reincorporated. The *Code of 1924* provided further that the "trustees acting at the time of reincorporation of any cemetery association organized as a corporation under the laws of the state of Iowa, whose incorporation may have expired by operation of law or by the terms of its articles of incorporation, may reincorporate the same". The law with regard to reincorporation after the expiration of a corporate period has now been rewritten in such a way as to make its application general.²⁰²

The *Code of 1924* relative to coöperative associations provides that every association shall, on or before the first day of March of each year, make an annual report to the Secretary of State, setting forth the name of the company, its principal place of business, and a statement as to its business, showing its assets and liabilities. This law was amended to provide that a failure to comply with this section before the first day of April shall subject the delinquent association to a penalty of ten dollars, provided, however, that any corporation organized after the first day of January should be exempt from making any report for the year in which it is organized. It is the duty of the Secretary of State in April of each year to publish a list of delinquent associations, and if reports are not filed by July first, it becomes his duty to strike the name of all delinquent corporations from the list of live corporations in his office and enter the cancellation on record, thereby terminating the corporate rights of the association. Provision is made, however, for a reinstatement if application is made and the law complied with before the first of September.²⁰³

The law dealing with the regulation of common carriers prescribes a penalty for any railroad company which makes

²⁰² *Acts of the Forty-first General Assembly*, Ch. 161; *Code of 1924*, Sec. 8592.

²⁰³ *Acts of the Forty-first General Assembly*, Ch. 160.

an unjust discrimination as to passenger or freight rates. A recent amendment to the law provides, however, that where two or more railroads run into a city or village, one having a shorter mileage than the other from a given point through which both pass, the Board of Railroad Commissioners may permit the railroad having the longer mileage to meet the rate made by the shortest line. Moreover, if an industry or commodity located within the State of Iowa is competing with an industry or commodity outside the State, the Board of Railroad Commissioners may permit the railroad serving the industry within the State to meet the freight and passenger rates established by the railroad serving the industry outside of the State. This latter provision tends to foster home industries, while the former allows free competition between competing corporations within the borders of the State.²⁰⁴

Another measure touching the subject of railroads which was passed by the Forty-first General Assembly is one which requires that automatic doors be placed on the fire boxes of all locomotive engines. The purpose of this act is to safeguard railroad employees and it is discussed above under the subject of social legislation.²⁰⁵

BANKS AND BANKING

The numerous bank failures in Iowa in recent years have given rise to a large amount of legislation relative to banks and banking. More than thirty measures were introduced in the Forty-first General Assembly dealing with this subject and eleven such measures were passed. Prior to 1925 banks selected as depositories for public funds were required to file bonds with securities to be approved by the county treasurer and the board of supervisors in double the

²⁰⁴ *Acts of the Forty-first General Assembly*, Ch. 157; *Code of 1924*, Secs. 8055, 8056.

²⁰⁵ *Acts of the Forty-first General Assembly*, Ch. 156.

amount deposited, or if a surety company bond were given, the bond had to be ten per cent more than the amount deposited. This plan frequently led to controversies with surety companies and the protection of public funds was becoming more and more difficult. Representative Fred C. Lovrien and Senator J. L. Brookhart introduced a bill in the Forty-first General Assembly which created a State sinking fund for the security of such deposits and depository banks were relieved of giving bonds. This measure was approved by the Governor on March 27, 1925. However, there was still some disagreement as to the provisions of the measure. It was believed by some to be retroactive and to apply to banks already in the hands of receivers. Others contended that it would allow a large sum of money to accumulate in the sinking fund in Des Moines whether it was needed there or not. The authors of the bill contended that it was not retroactive and that money would be collected only as needed. On April 2nd the Sifting Committee presented another bill which provides that money shall not be diverted into the sinking fund until needed.

Depository banks are required by law to pay interest on public funds deposited with them at a rate of at least two and one-half per cent per annum on ninety per cent of the daily balances. This interest accrues to the general fund but may now be diverted to the State sinking fund when necessity requires. When a bank containing public funds is closed and placed in the hands of a receiver or a trustee in bankruptcy, the State Superintendent of Banking shall notify the State Treasurer of the amount of public funds in the closed bank. The treasurer shall then divert the interest on State funds on deposit into the State sinking fund, and instruct the county treasurers to divert the interest on all public deposits in their counties into the State sinking fund. This diversion of interest shall continue until sufficient

funds have been deposited in the sinking fund to replace the public deposits in the closed bank.²⁰⁶

Another significant measure passed with regard to banking is one which provides for the establishment of a State Banking Board, to consist of the Superintendent of Banking as ex officio member and chairman and four other members appointed by the Governor to serve for a term of four years. J. H. Hogan of Des Moines, Ray Nyemaster of Davenport, E. W. Miller of Waterloo, and C. J. Wohlenberg of Holstein constitute the appointive members of this board. They are required to meet regularly at the office of the Superintendent of Banking, once each month, and at such times as necessity requires. The members of the Board shall have free access to all records of the office of the Superintendent of Banking and shall act in connection with the Superintendent in an advisory capacity concerning all matters pertaining to the conduct of the Banking Department and the administration of the banking laws of the State.²⁰⁷

For the purpose of liquidation and reorganization of banks for which receivers have been appointed, amendments adopted by the Forty-first General Assembly provide that if a majority of the creditors holding direct unsecured obligations of such bank in excess of ten dollars each and totalling in the aggregate amount seventy-five per cent of all direct unsecured obligations shall agree in writing to a plan of disposition and distribution of assets through "sale to another bank, reopening, reorganization or consolidation of the bank", the court in which the receivership is pending may, after due notice and hearing, order a disposition and distribution conforming to the provisions of the proposed

²⁰⁶ *Acts of the Forty-first General Assembly*, Chs. 173, 174; *The Des Moines Register*, March 27, 1925.

²⁰⁷ *Acts of the Forty-first General Assembly*, Ch. 178.

plan. Any county, city, town, or school district through its governing board and the State through the Executive Council may agree as to any unsecured and unpreferred claims owned by it. The purpose of this measure is to conserve the assets of the bank, to extend the time of payment to certain creditors, and to maintain the activities of the bank while collections are being made.²⁰⁸

The *Code of 1924* provides that any insurance company, fraternal beneficiary society, or savings bank accumulating money to be held in trust for the purpose of fulfilling any contract in its policies, shall invest its funds in bonds of the United States, State or municipal bonds, or real estate bonds or mortgages. The Forty-first General Assembly passed a bill which allows greater freedom in the matter of investment, and stipulates that such corporations may invest in "farm loan bonds issued under the act of congress approved July seventeenth (17), nineteen hundred sixteen (1916), as amended, where the corporation issuing such bonds is loaning in Iowa". This amendment was introduced by Representative Ray Yenter of Johnson County.²⁰⁹

Any seven persons residing in the State of Iowa may, in accordance with recent legislation, apply to the Superintendent of Banking for permission to organize a credit union. The application must be issued in duplicate form and state the name and location of the proposed credit union, the name and address of subscribers to shares, and the number of shares subscribed by each. The applicants shall prepare and adopt by-laws, copies of which shall be sent to the Superintendent of Banking. Within thirty days after the receipt of the application and by-laws the Superintendent shall determine whether they conform with

²⁰⁸ *Acts of the Forty-first General Assembly*, Chs. 179, 180.

²⁰⁹ *Acts of the Forty-first General Assembly*, Ch. 175; *Code of 1924*, Secs. 8737, 8829, 9183.

the law and whether such credit union should be established. If he approves the organization, he shall return to the applicants the duplicate certificate of organization with a certificate of approval, which shall be filed with the county recorder and the applicants shall thereby become a credit union. This organization is in the nature of a mutual benefit association, which shall have power to receive the savings of its members, to make loans to its members or to a coöperative society or organization having membership in the union, to deposit or invest funds, and to assess fines as provided in the by-laws. Provision is made for the election of additional members and the election of officers, annual reports, the expulsion of members, and for a final dissolution of the union.²¹⁰

Whenever the capital stock of a State or savings bank becomes impaired the Superintendent of Banking may require an assessment upon the stockholders, the required notices being sent out by the directors. If any stockholder neglects or refuses to pay his assessment within ninety days from the date of mailing the notice, the board of directors shall cause a sufficient amount of stock to be sold to make good the deficiency. Formerly a notice of sale was required to be posted and published thirty days prior to the date of the sale. This time limit has now been reduced to ten days and the notice may be given by personal service or by posting and publishing. A further amendment to the law provides that if the proceeds of a sale of stock is insufficient to satisfy the entire assessment liability of the stockholder, "he shall be personally liable for the deficiency, which may be collected by suit brought in the name of the bank against such stockholder."²¹¹

The *Code of 1924* provides that when the property of

²¹⁰ *Acts of the Forty-first General Assembly*, Ch. 176.

²¹¹ *Acts of the Forty-first General Assembly*, Ch. 181; *Code of 1924*, Sec. 9248.

“any person, partnership, company, or corporation” has been placed in the hands of a receiver for distribution the following claims shall, after the payment of all costs, be entitled to priority settlement in the order named: (1) taxes or other debts entitled to preference under the laws of the United States; (2) debts due or taxes assessed and levied for the benefit of the State, county, or municipality; and (3) debts due employees for labor. The Forty-first General Assembly passed a law declaring that the provisions of this section shall not apply to the receivership of “state banks, savings banks, loan and trust companies, or private banks”, and that in these cases no such preference or priority shall be allowed, “except for labor as provided by statute.”²¹² National banks were not permitted, according to the Federal laws, to grant this preference. Moreover, the State laws concerning these funds were inconsistent: one law provided that all public funds in banks should be secured by bonds; while the section mentioned above provided that they be paid first.

Another amendment to the Code provides that banking corporations shall be liable for the payment of taxes assessed to their stockholders and the same may be collected by an action in the name of the county. The corporation may in turn recover from each stockholder his proportion of the taxes so paid, and shall have a lien on his stock and unpaid dividends. If the unpaid dividends are not sufficient to pay the tax the corporation may enforce the lien and after due notice may cause the shares to be sold. Under the provisions of this law a person owning corporation stock is not required to report it to the assessor since it will be assessed in the hands of the corporation. Frequently the corporation pays a certain dividend including taxes. Thus the law is a convenience in the collection of taxes.²¹³

²¹² *Acts of the Forty-first General Assembly*, Ch. 182; *Code of 1924*, Sec. 12719.

²¹³ *Acts of the Forty-first General Assembly*, Ch. 159.

Another measure of the Forty-first General Assembly which touches the subject of banking is one which declares that any officer, director, or employee of a bank who shall use the funds of the bank except for the regular business transactions of the bank "shall be guilty of embezzlement and shall, on conviction thereof, be imprisoned in the penitentiary not to exceed twenty (20) years." This measure is further discussed in connection with the subject of criminal law.²¹⁴

INSURANCE

Ten laws were passed by the Forty-first General Assembly relative to insurance, five of which deal with life insurance alone. The officers or directors of each life insurance company are required annually, by the first day of March, to prepare and file in the office of the Commissioner of Insurance a statement of its affairs for the previous calendar year. The Commissioner is then required to ascertain the net cash value of every policy in force in all companies of the State. The net cash value of all policies of any company being ascertained, the Commissioner shall notify the company of the amount, and the officers shall deposit approved securities with the Commissioner for the amount of the ascertained valuation. Such securities may consist of Federal bonds, State bonds, municipal bonds, real estate bonds and mortgages, policy loans, or real estate. A recent amendment introduced by Senator William J. Goodwin provides, however, that in lieu of the policy loan agreement any company may file a verified statement of such policy loan. The company shall thereafter furnish to the Commissioner on the first day of each month, a verified report as to any cancellations or additions to such loans during the preceding month. Such lists shall be taken as a security to

²¹⁴ *Acts of the Forty-first General Assembly, Ch. 177.*

be deposited as provided by law, and, furthermore, shall be checked at least quarterly by the Commissioner of Insurance.²¹⁵

Securities which life insurance companies are required to deposit with the Commissioner of Insurance may be changed at any time by substituting therefor other securities of a like character and amount. A recent amendment to the law, introduced by Senator Charles J. Fulton, permits sheriffs' certificates of the sale of land, as well as mortgages, to be deposited with the Commissioner as a substitute for other securities. Such certificates shall be accepted for deposit, however, only for the amount of the original securities and shall be withdrawn at the end of the period of redemption, or within thirty days if redemption is made or a deed obtained prior to the expiration of the time fixed for redemption.²¹⁶

In like manner, fraternal life insurance companies may substitute for their original securities others of a like character and amount. Such new securities may consist of "certificates of sale furnished by the sheriff in connection with the foreclosure of mortgages on Iowa real estate", or "warranty deeds conveying all the property included in the original mortgage". Such deeds shall be held by the Commissioner of Insurance in trust for the policy holders of the society, and all deeds must be recorded and accompanied by an abstract showing that the company has good title. They shall be accepted only for the amount of the security and only for so long as the company annually certifies that taxes are paid and fire insurance maintained. Moreover, the total amount of certificates of sale and deeds deposited shall not exceed five per cent of the amount the

²¹⁵ *Acts of the Forty-first General Assembly*, Ch. 163; *Code of 1924*, Secs. 8653, 8654, 8655.

²¹⁶ *Acts of the Forty-first General Assembly*, Ch. 164.

society is required to deposit with the Insurance Department.²¹⁷

The law of Iowa provides that funds deposited with the Commissioner of Insurance by life insurance companies or associations and the funds or accumulations held in trust for the purpose of fulfilling any contract of insurance shall be invested in approved securities. Among other securities which have formerly been approved by law are bonds and mortgages which are first liens upon real estate worth at least double the amount loaned thereon, exclusive of improvements, or worth two and one-half times such amount including the improvements thereon, "if such improvements are constructed of brick or stone". A measure passed by the Forty-first General Assembly amended the law so that the buildings need not be constructed of brick or stone.²¹⁸

Any fraternal benefit society authorized to do business in the State of Iowa and operating on a lodge plan may provide for the payment of death or annuity benefits upon the lives of children between the ages of two and eighteen years of age. Under the provisions of the *Code of 1924* such insurance could be taken out only for the benefit of children for whose support and maintenance a member of the society was responsible, but in case such membership terminated the insurance might be continued for the benefit of the child's estate or for any other person who assumed the responsibility of supporting the child. The law has been amended, however, so that insurance may now be taken out for any child of proper age, regardless of whether or not such child is maintained and supported by a member of the society issuing the policy of insurance.²¹⁹

²¹⁷ *Acts of the Forty-first General Assembly*, Ch. 166; *Code of 1924*, Sec. 8834.

²¹⁸ *Acts of the Forty-first General Assembly*, Ch. 165; *Code of 1924*, Sec. 8737.

²¹⁹ *Acts of the Forty-first General Assembly*, Ch. 167; *Code of 1924*, Secs. 8837, 8849.

Any company issuing policies of insurance other than life may insure the fidelity of persons holding places of private or public trust or execute as surety any bond or other obligation required by law, except bonds required in criminal cases. The *Code of 1924* provided, however, that none but stock companies should "engage in fidelity and surety business; and insure the maker, drawer, drawee or indorser of checks, drafts, bills of exchange, or other commercial paper against loss by reason of any alteration of such instruments." Senator Ed. Hoyt Campbell introduced a bill which removed this limitation and allows any company writing insurance other than life to issue such insurance.²²⁰

Section 8990 of the *Code of 1924* provided that a policy of insurance, other than life, which required the insured to bear any portion of the loss of the property covered by the insurance should be void; and the Commissioner of Insurance was required to refuse to authorize any company to do business if the form of policy issued or proposed to be issued contained such a contract. An amendment has now been passed, limiting the application of this restrictive provision to any policy of fire, lightning, tornado, cyclone, wind storm, and sprinkler leakage insurance. Thus automobile insurance is not included within this provision of the law, and an automobile accident policy written on a "deductible plan" is valid.²²¹

Every fire insurance company or association authorized to transact business in the State of Iowa is required to conduct its business in the name under which it is incorporated. And there shall not appear on the face of the policies anything that would indicate an obligation on the

²²⁰ *Acts of the Forty-first General Assembly*, Ch. 168; *Code of 1924*, Secs. 8940, 8941.

²²¹ *Acts of the Forty-first General Assembly*, Ch. 169.

part of any other company. A recent amendment introduced by Senator Ed. Hoyt Campbell provides, however, that companies "associating themselves together for the purpose of issuing joint policies may issue them under the underwriter's title used by them, provided the names of the companies represented by such underwriter's title shall appear on the face and filing back of the policy and the percentage of the total risk assumed by each shall be set out opposite the signature of each company."²²²

The *Code of 1924* provides that actions to collect assessments from any member of an association organized to insure against loss by hailstorms shall be brought in the county where the member resides. A bill introduced by Representative Earl W. Vincent resulted in an amendment to the law making this rule applicable not only in case of hail insurance but to all mutual fire, tornado, hailstorm, and other assessment insurance associations which are provided for in Chapter 406 of the Code.²²³ In like manner no court other than that of the county in which the policy holder resides now has jurisdiction of actions to collect premiums or premium notes payable or given for insurance other than life, any statement or agreement in the policy to the contrary notwithstanding.²²⁴

REAL ESTATE

Four measures were passed by the Forty-first General Assembly touching the subject of real estate. In accordance with the laws of this State recorded mortgages upon real estate may be assigned of record by the execution of an appropriate written instrument duly acknowledged and recorded in the county in which such real estate is situated. An additional provision to the law on this point was intro-

²²² *Acts of the Forty-first General Assembly*, Ch. 170.

²²³ *Acts of the Forty-first General Assembly*, Ch. 171; *Code of 1924*, Sec. 11044.

²²⁴ *Acts of the Forty-first General Assembly*, Ch. 172.

duced by Senator George M. Clearman, providing that when a mortgage or other incumbrance upon real estate shall be assigned or released by a separate instrument it shall be the duty of the recorder to enter in the margin of the record of such mortgage or instrument the character of the assignment or release and the book and page where the same is recorded. Under this provision of the law the mortgage or incumbrance will show on its face if an assignment or release has been made, and will refer to the book and page where detailed record may be found.²²⁵

Section 11024 of the *Code of 1924* provided that no action based upon any claim arising prior to January 1, 1900, should be maintained to recover real estate or any interest in real estate, against the holder of the record title in possession, when such holder and his grantees are shown to have held chain of title since January 1, 1900, unless such claimant "shall within one year from and after July 4, 1919" file in the office of the recorder of deeds of the county wherein the real estate is situated, a statement in writing, describing the real estate involved and the nature and extent of the claim and stating the facts upon which the claim is based. Representative Lafe Hill introduced a bill in the Forty-first General Assembly, which after amendment, resulted in changing the dates 1900 and 1919 in this section to 1915 and 1925 respectively, thus making it possible for persons having claims arising since January 1, 1915, to file claims for the same at any time prior to July 4, 1926.²²⁶

Part of section two of House File No. 270 of the *Acts of the Extra Session of the Fortieth General Assembly*, which deals with the forfeiture of real estate contracts, was rejected by the General Assembly. The words "or ninety

²²⁵ *Acts of the Forty-first General Assembly*, Ch. 188; *Code of 1924*, Sec. 10107.

²²⁶ *Acts of the Forty-first General Assembly*, Ch. 189.

days as the case may be'', as they appear in section five, were likewise omitted when the law was passed. In both of these cases, however, these rejected parts were copied into the enrolled bill, as signed by the presiding officers and by the Governor, and were finally incorporated into the *Code of 1924* as parts of Sections 12390 and 12393. The Forty-first General Assembly passed a bill striking these provisions from the Code to make it conform to the former bill as passed by the extra session of the Fortieth General Assembly. The same bill amended Section 12391 of the Code and provides that notice in case of forfeiture of real estate contracts may be served personally or by publication in the same manner as is provided for the service of original notices, except that when the notice is served by publication no affidavit therefor shall be required before publication. Service by publication shall be deemed complete on the day of the last publication.²²⁷

The law relative to hearing and notice on application to sell or mortgage real estate, in the settlement of estates, is not clearly stated in the *Code of 1924*. Representative L. B. Forsling introduced a bill which repeals Sections 11934 and 11935 of the Code and substitutes a new section which reads: "The court or judge shall fix the time and place of hearing of the application, and prescribe the time and manner of service of the notice of such hearing on all persons, including claimants, interested in said estate."²²⁸

CRIMINAL LAW

Two acts were passed dealing directly with the subject of criminal law. One of these deals with the embezzlement of bank funds and provides that any officer, director, or employee of a bank who shall in any manner, directly or

²²⁷ *Acts of the Forty-first General Assembly*, Ch. 190.

²²⁸ *Acts of the Forty-first General Assembly*, Ch. 191.

indirectly, use the funds or deposits of a bank or any part thereof, except for the regular business transactions of the bank, or who secretes, with intent to embezzle or fraudulently convert to his own use, any funds or deposits of the bank shall be guilty of embezzlement and shall, on conviction thereof, be imprisoned in the penitentiary not to exceed twenty years. This measure is in accord with other bills passed for the protection of bank deposits.²²⁹

Another amendment to the law deals with the crime of rape. Formerly the penalty for this offense was imprisonment in the penitentiary "for life or any term of years." Under the new law imprisonment may be for life or any term of years, not less than five, and the court may pronounce sentence for a lesser period than the maximum, the provisions of the indeterminate sentence law to the contrary notwithstanding, and when a lesser than the maximum sentence is pronounced, the prisoner shall be subject to the jurisdiction of the Board of Parole.²³⁰

PROFESSIONS

Section 2583 of the *Code of 1924* provides that "after July 1, 1925" no college of pharmacy shall be approved by the Pharmacy Examiners as a college of recognized standing unless the entrance and graduation requirements are equivalent to those prescribed "from time to time" by the American Conference of Pharmaceutical Faculties. This has been amended by striking out the words "from time to time" and inserting at the end of the section the words "for the year nineteen hundred twenty-four". Accordingly the regulations that are to be followed are those of 1924, and not such as may be prescribed from time to time. The words "after July 1, 1925" were also stricken out, as being

²²⁹ *Acts of the Forty-first General Assembly*, Ch. 177.

²³⁰ *Acts of the Forty-first General Assembly*, Ch. 197; *Code of 1924*, Sec. 12966.

of no effect, since the new law would, under the provisions of the State Constitution, become effective on July 4th of that year.²³¹

Persons who wish to engage in the practice of veterinary medicine are required to take an examination and to pay a license fee of twenty-five dollars to the Department of Agriculture. This license must be renewed annually and under the *Code of 1924* a fee of two dollars and fifty cents was charged for each renewal. This renewal fee has now been reduced to one dollar.²³²

MILITARY AFFAIRS

Two measures were passed by the Forty-first General Assembly relative to military affairs. Section 6946 of the *Code of 1924* provides that certain property to the extent of eighteen hundred dollars should be exempt from taxation in the case of honorably discharged soldiers, sailors, and marines of the war with Spain, Chinese relief expedition, or the Philippine insurrection. A recent amendment adds to this list of soldiers members of the "Tyler Rangers", the Colorado volunteers in the War of the Rebellion, 1861 to 1865, and participants in Indian wars.²³³

The second measure provides for the creation of a commission of three members to determine the location of unmarked graves of soldiers or sailors who served in the American Revolution and to supervise the erection of suitable markers or monuments. This commission shall be known as the Revolutionary War Memorial Commission and shall consist of the Curator of the Historical, Memorial, and Art Department of the State Library and two other members to be appointed by the Governor, one of whom

²³¹ *Acts of the Forty-first General Assembly*, Ch. 51; *Code of 1924*, Sec. 2583.

²³² *Acts of the Forty-first General Assembly*, Ch. 56; *Code of 1924*, Secs. 2769, 2773.

²³³ *Acts of the Forty-first General Assembly*, Ch. 147.

shall be a member of the Sons of the American Revolution and one a member of the Daughters of the American Revolution. An appropriation of twenty-five hundred dollars was made to be used in the erection of monuments — the cost of each not to exceed two hundred and fifty dollars.²³⁴

JUDICIAL PROCEDURE

Several changes were made by the Forty-first General Assembly in the law relative to the jurisdiction of courts and the method of judicial procedure. A law of this type was introduced by Senator Wm. E. McLeland and provides that the court in which the estate of any deceased person is administered, before final distribution, may allow and set apart from such estate a sum sufficient to provide an income adequate to pay for the care and upkeep of the cemetery lot upon which the body of the deceased is buried. The sum thus set apart shall be paid to the cemetery trustees.²³⁵

In the matter of security for costs, the Iowa law provides that if a defendant, before answering, shall file an affidavit that he has a good defense, in whole or in part, the plaintiff, if he be a non-resident of the State or a private or foreign corporation, must file in the clerk's office a bond for the costs in the amount fixed by the court. A recent amendment to this law provides that this bond shall be sufficient in amount to pay "all costs which may legally be adjudged against plaintiff."²³⁶

In order to secure the peace, provision is made that if there be just reason to fear the commission of an offense, the person complained of shall be required to enter into an undertaking, in such sum as the magistrate may direct, "to abide the order of the district court of the county at the

²³⁴ *Acts of the Forty-first General Assembly*, Ch. 211.

²³⁵ *Acts of the Forty-first General Assembly*, Ch. 192.

²³⁶ *Acts of the Forty-first General Assembly*, Ch. 196; *Code of 1924*, Sec. 11245.

next term'', and in the meanwhile to keep the peace. This undertaking, together with the complaints, affidavits if any, and other papers in the proceeding must be returned by the magistrate to the district court by the first day of the next term. At this time, in accordance with a recent amendment, the case shall stand for trial in the district court in the same manner as appeals from justices' courts, no notice of appeal being required.²³⁷

Section 13678 of the *Code of 1924* provides that at the term of court at which grand jurors are required to appear, the names of the twelve persons constituting the panel of the grand jury shall be placed in a box by the clerk, who shall draw therefrom seven names, and the persons whose names are so drawn shall constitute the grand jury. An amendment to this law provides that the names of any of the twelve who may have died, removed from the county, or have been excused by the courts shall not be included in the list from which the final selection is made.²³⁸

Another law which touches upon the subject of the jurisdiction of courts, discussed in connection with real estate, provides that in case of an application to sell or mortgage land for the settlement of an estate, the court or judge shall fix the time and place of hearing the application.²³⁹

LEGALIZING ACTS

Cities and towns, counties, townships, and school districts are authorized to exercise only such powers as are delegated to them by the State, and such powers must be exercised only in accordance with the law granting such power. It frequently happens that officers of these areas of government overstep their authority or exercise powers contrary

²³⁷ *Acts of the Forty-first General Assembly*, Ch. 198; *Code of 1924*, Sec. 13519.

²³⁸ *Acts of the Forty-first General Assembly*, Ch. 199.

²³⁹ *Acts of the Forty-first General Assembly*, Ch. 191.

to law. Usually these acts are done in good faith; and in order to obviate any difficulty the General Assembly is frequently called upon to legalize acts which have been thus performed. The number of legalizing acts passed by the Forty-first General Assembly was relatively small, but there were enough measures of this character to require that an entire section of the laws be devoted to this subject.

Of the twenty-three legalizing acts passed at this session of the legislature twelve relate to cities and towns. In three cases franchises granted to electric light and power companies by a group of neighboring towns were legalized. The Iowa River Light and Power Company had such a franchise from the towns of Steamboat Rock, Union, Beaman, New Providence, Whitten, Conrad, Hubbard, Radcliffe, Liscomb, and Eldora; the Rolfe Light and Power Company was granted a similar franchise in the towns of Rolfe, Plover, Mallard, and Curlew; while the Britt Light and Power Company claimed a franchise from the towns of Britt, Crystal Lake, Wesley, and Woden. In each of these three cases doubts had arisen regarding the legality of the franchise, and in each case the matter was adjusted by means of a legalizing act.²⁴⁰

In two instances legalizing acts were necessary where measures had been passed by the city council, but the records were lost or incomplete. Thus the town of Primghar had granted authority to G. A. Healy and his successors to build an electric light line through the streets of the town, the action being ratified and approved by the voters of the town at an election held for that purpose. The records of the council showing the adoption of such an ordinance, the calling of the election, and canvass of voters having been lost, a legalizing act was necessary to properly adjust the matter. In like manner the town of Ossian had granted a

²⁴⁰ *Acts of the Forty-first General Assembly*, Chs. 261, 267, 268.

franchise to Harry Bullard and his assigns to erect an electric light and power plant in the town of Ossian. The records in the case being insufficient, doubt had arisen as to whether or not all of the provisions of the law had been fulfilled. In order to remove any question in this regard the Forty-first General Assembly passed an act legalizing the proceedings of the town council so far as they cover the passage of the ordinance in question. In a third case, very similar to these, the Armstrong Cement Works and its assigns had been granted an electric light and power franchise by the town of Armstrong. Doubts having arisen as to whether or not all of the provisions of the law relative to the granting of franchises were strictly complied with, a legalizing act was passed to avoid further dispute.²⁴¹

In two other cases warrants issued by city councils were legalized. The city of Oelwein, in order to secure funds for water and sewage purposes, issued warrants of indebtedness in 1924 in the amount of about nineteen thousand dollars. The legality of this debt being in question a legalizing act was passed, making valid the warrants as issued together with whatever interest had accrued thereon.²⁴²

In 1921 the town of Bellevue issued warrants in the sum of about four thousand six hundred dollars for the purpose of constructing a sanitary sewer system. Some doubt arose concerning the legality of these warrants on the ground that the expenditure evidenced thereby was contracted in excess of the appropriations made for the funds against which the warrants were drawn. The indebtedness being a just one and the funds having been used for a legal purpose, the claims were made good by means of a legalizing act.²⁴³

In another instance the town of Bellevue through its

²⁴¹ *Acts of the Forty-first General Assembly*, Chs. 257, 259, 275.

²⁴² *Acts of the Forty-first General Assembly*, Ch. 258.

²⁴³ *Acts of the Forty-first General Assembly*, Ch. 273.

town council had appropriated the sum of nine thousand dollars of the surplus earnings of its electric light and power plant for the purpose of making legal corporate expenditures. To avoid any difficulty which might arise an act was passed declaring this appropriation legal.²⁴⁴

In October, 1924, the city of Council Bluffs awarded to the Wickham Bridge and Pipe Company a contract for the building of certain storm sewers. The form of contract followed that of the *Code of 1897* and some question arose as to its validity because of a failure to comply with the exact provisions of the *Code of 1924*. To avoid any further questions an act was passed declaring the contract valid.²⁴⁵

A special election was held in Webster City in 1920 to determine whether or not the city should issue bonds for the purchase and maintenance of a gas works. The proposition having received an affirmative vote the bonds were issued. Subsequently doubts arose concerning the validity of the election and the bonds because of the form in which the proposition was submitted. Accordingly a legalizing act was needed and adopted.²⁴⁶

An act was also passed legalizing the sale of the electrical distribution and transmission system in the town of Alvord — doubts having arisen as to whether or not all of the provisions of the law were strictly complied with.²⁴⁷

Six legalizing acts were passed with reference to corporations. The Iowa Dairy Company of Dubuque, the State Bank of Blairsburg, and the Van Nostrand Saddlery Company of Muscatine each desired to secure a renewal and extension of their incorporation. In each case, however, irregularities had arisen which gave rise to questions of legality. Accordingly, a legalizing act was passed for each

²⁴⁴ *Acts of the Forty-first General Assembly*, Ch. 277.

²⁴⁵ *Acts of the Forty-first General Assembly*, Ch. 256.

²⁴⁶ *Acts of the Forty-first General Assembly*, Ch. 266.

²⁴⁷ *Acts of the Forty-first General Assembly*, Ch. 271.

of these corporations granting an extension of the period of their incorporation.²⁴⁸

An act was passed to legalize the certification and levy of taxes and assessments on property by municipalities as defined in Chapter four, *Acts of the Extra Session of the Fortieth General Assembly*.²⁴⁹

The Louisa County Fair Association in 1923 failed to file its report with the Secretary of Agriculture until some forty days after the expiration of the time for such filing. The report was legalized by an act of the Forty-first General Assembly.²⁵⁰

Section 10411 of the *Code of 1924* deals with the publication of notices of incorporation. This section was repealed and another enacted "legalizing corporations which failed to publish notice within the time required by law and whose articles of incorporation were defective." This measure is in the nature of a general legalizing act.²⁵¹

Three legalizing acts were passed with reference to counties. In Clay County a special election was held in 1919 to vote upon the question of hard surfacing certain roads. The proposition was approved and the board of supervisors authorized to proceed with the work; but a vote was taken in 1924 to repeal the order. The notice to submit this latter proposition to the voters was published for only one week, whereas the law requires such notices to be published for two weeks. The vote cast indicated, however, that the people of the county generally participated in the voting and an act was passed legalizing the election.²⁵²

The board of supervisors of Plymouth County allowed a claim of \$200 for the construction of a culvert in the town of Hinton. Subsequently it was learned that the law rela-

²⁴⁸ *Acts of the Forty-first General Assembly*, Chs. 264, 270, 272.

²⁴⁹ *Acts of the Forty-first General Assembly*, Ch. 269.

²⁵⁰ *Acts of the Forty-first General Assembly*, Ch. 265.

²⁵¹ *Acts of the Forty-first General Assembly*, Ch. 278.

²⁵² *Acts of the Forty-first General Assembly*, Ch. 260.

tive to the size of culverts had recently been changed, so that the one constructed did not conform to the regulation size, although neither the board of supervisors nor the council of the town of Hinton were aware of this fact when the claim was allowed. This claim was legalized.²⁵³

In Linn County the board of supervisors entered into contract for the construction of a number of bridges and culverts. Because of a mistake as to the time of the taking effect of certain provisions of the *Code of 1924* relative to public contracts, the board failed to give notice as required by law. The Forty-first General Assembly passed a legalizing act to validate this contract.²⁵⁴

Two legalizing acts were passed for the benefit of school districts. A special election was held in District No. 5, Fredericksburg Township, Chickasaw County, to vote upon the question of issuing bonds for building purposes. Doubts having arisen as to the validity of the bonds, the regularity of the prior proceedings, the sufficiency of the record of the proceedings, and the authority of the board of directors, a legalizing act was passed to validate all proceedings.²⁵⁵ In like manner a special election was held for the establishment of the Independent School District of Baldwin, in Jackson County. Doubts having arisen as to the regularity and validity of the proceedings, it was deemed advisable to adopt a legalizing act.²⁵⁶

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²⁵³ *Acts of the Forty-first General Assembly*, Ch. 263.

²⁵⁴ *Acts of the Forty-first General Assembly*, Ch. 276.

²⁵⁵ *Acts of the Forty-first General Assembly*, Ch. 262.

²⁵⁶ *Acts of the Forty-first General Assembly*, Ch. 274.

SOME PUBLICATIONS

Wisconsin, Its History and Foremost Citizens, 1634-1924. By Milo Milton Quaife. Chicago: The S. J. Clarke Publishing Company. 1924. Pp. Vol. I, 608; Vol. II, 599; Vol. III, 678; Vol. IV, 682. Maps, plates. The first volume of this work was written by Dr. Quaife, while the second volume consists of nineteen essays by different authors. Volumes three and four, which contain biographical sketches and portraits of Wisconsin citizens, were prepared independently of the first two and do not carry the same title page.

The twenty-five chapters of volume one trace the chronological development of Wisconsin from its beginning down to the middle of the seventies. The story is written in a most pleasing style with balance and proportion in the selection of materials. The author's intimate acquaintance with the story of Wisconsin, his ripe scholarship, and familiarity with the sources covering the field enabled him to write an interesting and authoritative history. The opening chapter is a summary of the geological history of the State. There follows a vivid account of the Wisconsin Indians, and in turn eight chapters covering the period of the French regime. The story of the British period in Wisconsin occupies four chapters. In the section of the history which narrates the story of Wisconsin from the Revolutionary War to the thirties, the chapter on "The Period of Army Rule" is a most satisfactory account of the days when Fort Howard, Fort Winnebago, and Fort Crawford guarded the frontier from Green Bay to the Mississippi. A discussion of the "Evolution of Civil Government" and the "Passing of the Indian Domain" precede the story of Territorial days and the beginnings of Statehood. An interesting account of social and religious experiments in the State, the story of Wisconsin's part in the conflict between the North and the South, and a chapter on "Political Reforms and Economic Progress" complete volume one.

In volume two the first three essays continue the chronological treatment used in the first volume. The remaining sixteen essays cover social, economic, and political aspects of the history of Wisconsin during the last quarter century. Naturally in such a type of treatment there is some overlapping of topics and a lack of the unity which characterizes the first volume of the history.

Throughout the work the illustrations are good. Brief bibliographical notes accompany the chapters in volume one, and part of those in volume two. Each of the four volumes has an index.

History of Agriculture in the Northern United States, 1620-1860. By Percy Wells Bidwell and John I. Falconer. Washington: The Carnegie Institution of Washington. 1925. Maps, plates. Pp. 512. This volume forms a part of the contributions to American economic history projected by the Department of Economics and Sociology of the Carnegie Institution of Washington in 1904, and is the fifth study to be published. Upon the discontinuance of this Department in 1916, the general plan of the work was changed. Dr. Percy W. Bidwell, then Assistant Professor of Economics at Yale, was invited to prepare the history of northern agriculture to 1840 which comprises parts one to three in the present volume. He also edited the Falconer manuscript, which covers the period from 1840-1860, so as to merge the two studies into a unified history with continuous chapter numbers. The volume contains thirty-nine chapters divided as follows: five chapters under the general heading "Agriculture in the Earliest Settlements", five chapters covering "Rural Economy in the Eighteenth Century", nine chapters dealing with the topic "Expansion and Progress, 1800-1840", and twenty chapters covering the "Period of Transformation, 1840-1860". The text is a comprehensive survey of the subject, and one which doubtless will prove of much value in the study of agricultural history. The narrative is well-written, and abundant footnote references make it possible for the student to investigate any topic more fully if it is desired. A classified and critical bibliography, an alphabetical index of authors, and a statistical appendix are included. When the companion volumes covering the history of southern agriculture for the same period, and the history of agri-

culture after 1860 appear, a much desired and well-rounded scholarly presentation of the subject will be added to the literature on agricultural development in the United States.

The Beginning of a New Village, by Moses Witcher Mann, is the chief article in *The Medford Historical Register* for June.

Bulletin seventy-eight of the Bureau of American Ethnology is a volume by A. L. Kroeber entitled *Handbook of the Indians of California*.

The Virginia Frontier, 1754-1763, a monograph by Louis K. Koontz, is a recent contribution in the *Johns Hopkins University Studies in Historical and Political Science*.

The July issue of *The New England Historical and Genealogical Register* contains a memoir of Henry Cabot Lodge, by Louis Arthur Coolidge.

The Osage Tribe: The Rite of Vigil, a monograph by Francis La Flesche, makes up the bulk of the volume of the *Thirty-ninth Annual Report of the Bureau of American Ethnology*.

The Ordinance Making Powers of the President of the United States, a monograph by James Hart, is a recent number of the *Johns Hopkins University Studies in Historical and Political Science*.

A Pioneer of the Northwest, by Ralph Bertram Harris, and a continuation of *Blockade Running During the Civil War*, by Francis B. C. Bradlee, are two articles of interest in the *Historical Collections of the Essex Institute* for July.

Sectionalism in Congress (1870-1890), by Hannah Grace Roach, and *Rainfall and the Populist Party in Nebraska*, by John D. Barnhart, are two articles of historical interest in the August number of *The American Political Science Review*.

The Presidential Election of 1824-1825, by Everett S. Brown, and *Communism During the French Revolution*, by Louis R. Gottschalk, are two articles of historical interest in the *Political Science Quarterly* for September.

New York's Contribution to the Supreme Court of the United States, 1789-1925, by E. Melvin Williams; *A Great Colonial Executive and Scholar — Cadwallader Colden*, by Charles A. Ingraham; and *Nullification*, by Charles A. Shriner, are three of the contributions in the July issue of *Americana*.

The University of the State of New York has recently issued a fourth volume of *The Papers of Sir William Johnson*, prepared for publication by the Division of Archives and History under the direction of Alexander C. Flick. These papers cover the period from January 3, 1763, to the end of 1765.

A Possible Pre-Algonkian Culture in Southwestern Massachusetts, by Edmund Burke Delabarre; *Debtor and Chattel Slavery in Aboriginal North America*, by William Christie Macleod; and *Report of a New Double Conoidal Pipe from Kentucky*, by Wm. S. Webb, are three of the papers included in the *American Anthropologist* for July.

Old Taverns of New York, by W. Harrison Bayles; *Ye Goose War*, by C. C. Dawson; *Letters of Joshua Renshaw*; *Lewis and Clarke's Expedition Over the Rocky Mountains, 1804-06*; *Mina-Sauk*, by Allan Hinchey; and a continuation of *Recollections of a Hospital Steward During the Civil War*, by Stephen Farnum Peckham, are among the contributions in *The Journal of American History* for July-September, 1924.

WESTERN AMERICANA

The Freighting Business; Some Recollections of an Old Freighter, by T. S. Garrett; and *Bill Nye*, an address by O. N. Gibson, are papers in the *Annals of Wyoming* for July.

Everett McNeil is the author of a volume — *Tonty of the Iron Hand* — which is a vivid story of Tonty and La Salle in the Mississippi Valley intended for young readers.

El Palacio for July 1, 1925, contains a synopsis of a paper by Edgar L. Hewett, entitled *Present Condition of the Pueblo Indians*. The number for September 1st contains a biographical sketch of Ralph Emerson Twitchell.

The Lyman Wright Colony, by Heman C. Smith, is one of the articles in *Autumn Leaves* for August. In the September number there is an article by C. Ed. Miller entitled *Some Little-Known Facts About a Well-Known Building* — the temple at Kirtland, Missouri.

Elizabeth Claridge McCune and *Extracts from the Private Journal of Orson Pratt* are two of the contributions in *The Utah Genealogical and Historical Magazine* for January. The Pratt journal is continued in the issues for April and July.

The April number of *The Wisconsin Archeologist* contains a continuation of the *Record of Wisconsin Antiquities*, by Charles E. Brown. *Indian Mounds and Village Sites at Plum City*, by Franklin Tomlinson; *Marking of the Delavan Lake Mounds*; *The Prairie Potawatomi*; *Indian Names of Our Wisconsin Lakes*; and *Religion of the Wisconsin Menomini* are short papers included in the issue for July.

A Retrospect After Twenty Years, by Edward P. Robertson; *Religious Education at Tax Supported Institutions*, by James C. Baker; and *Church Membership in North Dakota*, by John M. Gillette, are among the articles in the April issue of *The Quarterly Journal of the University of North Dakota*. *Community Drama*, by E. D. Schonberger, and *The Supreme Court, Congress, and the Constitution*, by Lauriz A. Vold, are two of the papers found in the May issue.

Volume thirty-three of the *Filson Club Publications* is *The Kentucky Land Grants*, compiled by Willard Rouse Jillson. This is an index to all the land grants recorded in the State Land Office at Frankfort, Kentucky, from 1782 to 1924. The lists which are classified and arranged alphabetically by the names of the grantees, include data on the number of acres, book in which recorded, date of survey, county, and water course.

IOWANA

An address by Charles W. Flint, *In Memory of Herbert Quick*, has been published in pamphlet form.

The Elkader Register issued an all Clayton County historical edition on September 10, 1925.

How the Grand Master of Iowa Saved Albert Pike's Library, by J. Hugo Tatsch, is an article of historical interest in the Iowa Masonic *Grand Lodge Bulletin* for July.

A volume entitled *Fifty Years of Parsons College, 1875-1925*, by Willis Edwards Parsons, has recently been published. The first chapter was contributed by C. J. Fulton.

John Springer is the author of an interesting paper on early days in Johnson County which appears in the *Year Book of the Old Settlers' Association of Johnson County, Iowa, for 1924-1925*. In the same publication O. A. Byington contributes *Some "Firsts" in Johnson County History*. . .

The *Annals of Iowa* for April contains an article, *Pioneer Law-makers Association of Iowa*, by David C. Mott; a continuation of *Plumbe's Sketches of Iowa in 1839*; and *Charles Wesley Tolles*, by David C. Mott. The number for July contains *The Autobiography of a Private Secretary*, by William H. Fleming, and a series of letters concerning the Palmetto Flag which was captured in 1865 and later deposited in the Historical Department at Des Moines.

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SOME RECENT HISTORICAL ITEMS IN IOWA NEWSPAPERS

Clinton County in a handbook of 1857, in the *Clinton Herald*, June 2, 1925.

Early schools in Davis County, in the *Bloomfield Democrat*, June 4, 1925.

Old school days, by W. M. Moore, in the *Clarinda Journal*, June 4, 1925.

A half-century of Congregationalism in Hartwick, in the *Brooklyn Chronicle*, June 4, 1925, and the *Montezuma Republican*, June 18, 1925.

Following Lyman Dillon's furrow, by Oakley Davidson, in the *Des Moines Register*, June 7, 1925.

- Pioneer tinsmith tells of old days, in the *Iowa Falls Sentinel*, June 10, 1925.
- Historical sketch of the Methodist Church at Wesley, by Rose Colby Giddings, in the *Wesley World*, June 11, 1925.
- Old days in Clarinda, by W. W. Bisby, in the *Clarinda Journal*, June 11, 1925.
- Boundary question settled in 1838, in the *Keokuk Citizen*, June 12, 1925.
- Navigation above the Falls of St. Anthony, by Captain Fred A. Bill, in the *Burlington Post*, June 13, 20, 27, July 4, 11, 18, 25, August 1, 8, 1925.
- History of Troy Academy, in the *Bloomfield Democrat*, June 18, 25, July 2, 9, 16, 1925.
- Sketch of the life of Henry Rickel, pioneer attorney, in the *Cedar Rapids Republican*, June 18, 1925.
- Grasshoppers fifty years ago, in the *Osceola Tribune*, June 18, 1925.
- Reflections of pioneer life, by Mrs. S. L. Pillsbury, in the *Spirit Lake Beacon*, June 18, 1925.
- The region called Council Bluffs, by Hattie T. Harl, in the *Glenwood Opinion*, June 18, 1925, reprinted from the *Council Bluffs Nonpareil*.
- The Colfax Township Presbyterian Church, in the *Grundy Register*, June 25, 1925.
- Incidents of the Civil War, by W. H. Houghtelin, in the *Marathon Republican*, June 25, 1925.
- Historical data on Jackson County, by W. L. Rantz, in the *Bellevue Leader*, June 25, 1925.
- Iowa State parks, in the *Des Moines Register*, June 28, 1925.
- Reflections of pioneer life, by Mrs. S. L. Pillsbury, in the *Estherville Republican*, July 1, 1925, reprinted from the *Spirit Lake Beacon*.
- Some pioneer history, in the *Crawfordsville Imprint*, July 3, 1925.

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Historic Iowa, in the *Traer Clipper*, July 10, 1925.

The history of the *Burlington Gazette*, in the *Burlington Gazette*, July 10, 1925.

Prehistoric remains near Missouri Valley, in the *Des Moines Register*, July 12, 1925.

About early Indians, by L. Cochran, in the *Jefferson Bee*, July 15, 1925.

A glimpse of early Poweshiek history, in the *Brooklyn Chronicle*, July 16, 1925, and the *Grinnell Herald*, July 24, 1925.

Aleck Scott's grave, in the *Des Moines Capital*, July 17, 1925.

The oldest log church in Iowa at Mars Hill, in the *Bloomfield Democrat*, July 23, 1925.

Early days in Page County, by Margaret B. Russell, in the *Clarinda Journal*, July 23, 1925.

Clayton County's first newspaper, in the *Elkader Register*, July 23, 1925.

Sketch of the life of Push-e-tone-neke-quā, widow of the last Sac and Fox chief, in the *Grinnell Herald*, July 28, 1925.

Reminiscences of an old timer, in the *Keosauqua Republican*, July 30, 1925.

History of Troy Academy, in the *Keosauqua Republican*, July 30, 1925.

Famous men of Iowa as known by W. W. Bisby, in the *Clarinda Journal*, July 30, 1925.

The story of the Southern Iowa Normal School, in the *Bloomfield Democrat*, July 30, August 6, 13, 20, September 3, 10, 1925.

Burning of the Mormon Temple, in the *Keokuk Citizen*, July 31, 1925.

The smallest church in Iowa, in the *Dubuque Tribune*, August 6, 1925.

Early history of Corydon, by Adam Ripper, in the *Corydon Democrat*, August 6, 1925.

- A map of Iowa in 1850, in the *Keokuk Citizen*, August 7, 1925.
- Sketch of the life of Andrew Thompson, ninety-six year old pioneer, in the *Waterloo Tribune*, August 9, 1925.
- Indian mounds near Cherokee, in the *Marshalltown Times-Republican*, August 10, 1925, the *Ottumwa Courier*, August 11, 1925, the *Mason City Gazette*, August 12, 1925, the *Clinton Herald*, August 14, 1925, and the *Burlington Hawk-Eye*, August 16, 1925.
- Cherokee County history, in the *Cherokee Chief*, August 13, 1925.
- Historical development, in the *Rake Register*, August 13, 20, 1925.
- How Washta was named, by Mrs. V. V. Keck, in the *Sioux City Journal*, August 14, 1925.
- Indian troubles in Cherokee, in the *Cherokee Times*, August 14, 1925.
- Early courts of Clayton County, in the *Elkader Register*, August 20, 1925.
- Sketch of the career of T. J. Peacock, Civil War veteran and Indian fighter, in the *Sac City Sun*, August 20, 1925.
- History of an Iowa school district, in the *Burlington Post*, August 22, 1925.
- When Delaware County records went on march, by Genevieve Savage, in the *Des Moines Register*, August 23, 1925.
- The story of Thomas Hergins, ex-slave, in the *Des Moines Register*, August 23, 1925.
- The passing of a pioneer, F. M. Park, in the *Des Moines Capital*, August 24, 1925.
- Pioneer days in Dickinson County, by J. A. Ellis, in the *Spirit Lake Beacon*, August 27, 1925.
- Reminiscences of J. H. Onstott, in the *Mechanicsville Press*, August 27, 1925.
- Early days in Iowa, in the *Clinton Herald*, August 27, 1925.
- Iowa's Constitution, in the *Muscatine Herald*, August 27, 1925.

The last log church in Iowa, by Alex Miller, in the *Lone Tree Reporter*, August 27, 1925.

The last stand of the Sioux, by Adelaide H. Knight, in the *Des Moines Register*, August 30, 1925.

The rise and fall of Jesse James, by Robertus Love, in the *Des Moines Register*, August 30, 1925.

Robberies of Jesse James, in the *Clarinda Journal*, September 3, 1925.

The capitol of Iowa, in the *Winnebago Republican*, September 3, 1925.

Sketch of the career of Judge W. I. Babb, in the *Mt. Pleasant News* and the *Davenport Democrat*, September 7, 1925.

Sketch of the career of Mr. and Mrs. William Coffin, pioneers, in the *Dallas County News*, September 9, 1925.

Early pioneer life in Dickinson County, in the *Spirit Lake Beacon*, September 10, 1925.

The story of Vicksburg's surrender, in the *Cedar Rapids Gazette*, September 10, 1925.

The first white child born in Clayton County, in the *McGregor Times*, September 10, 1925.

Clayton County and Elkader history, in the *Elkader Register*, September 10, 1925.

Sketch of the life of Judge Thomas Arthur, in the *Council Bluffs Nonpareil*, September 17, 1925.

Keokuk in 1857, in the *Keokuk Citizen*, September 18, 1925.

The Wright brothers in Cedar Rapids, by Grace Boston, in the *Cedar Rapids Gazette*, September 19, 1925.

Early day history, by Frank M. Mills, in the *Jefferson Bee*, September 23, 1925.

Famous forts in United States history, by Elmo Scott Watson, in the *Waverly Independent Republican*, September 24, 1925.

Mark Twain in Keokuk, in the *Keokuk Citizen*, September 25, 1925.

HISTORICAL SOCIETIES

PUBLICATIONS

The Colorado Magazine for April contains a *Report on Archaeological Reconnaissance in Southwestern Colorado in the Summer of 1923*, by Frank H. H. Roberts, Jr.

The Big Four Railroad in Indiana, a monograph by Ared Maurice Murphy, makes up the double number of the *Indiana Magazine of History* for June and September.

The Life of Conrad Weiser, compiled and edited by Wm. M. Beauchamp, has been recently published by the Onondaga Historical Association.

The first volume of *Messages of the Governors of Michigan*, edited by George N. Fuller, has recently been published by the Michigan Historical Commission. These cover the years 1824 to 1845.

The Federal Procession in the City of New York, by Sarah H. J. Simpson, and *Some Lead Pencils of the American Revolution* are two papers in the July issue of *The New-York Historical Society Quarterly Bulletin*.

The Norse Church in Medieval America, by Carl H. Meinberg, and *Know-Nothingism in Baltimore 1854-1860*, by Benjamin Tuska, are two articles on American history in the July issue of *The Catholic Historical Review*.

Chapter three of *The Proprietors of the Northern Neck*, by Fairfax Harrison, is one of the contributions in *The Virginia Magazine of History and Biography* for July. There is also an installment of the *Kennon Letters*.

Early Rhode Island Flags, by Howard M. Chapin, is one of the papers in the *Rhode Island Historical Society Collections* for October. In the same number is a concluding installment of *The Memoranda of William Green*, by Henry S. Fraser.

The Quarterly Journal of the New York State Historical Association for July contains two papers: *The United Empire Loyalists*, by Alexander C. Flick; and *The Orderly Room of Old Fort Niagara*, by R. Bruce Taylor.

The Wisconsin Historical Society has issued a second volume in their *Calendar Series*. This is the *Calendar of The Kentucky Papers of the Draper Collection of Manuscripts*, by Mabel Clare Weeks.

Volume twenty-one of the *Ontario Historical Society Papers and Records* contains an article by E. A. Cruikshank, entitled *The Contest for the Command of Lake Ontario in 1814*, which is of interest to students of United States history.

The July number of the *Proceedings of the New Jersey Historical Society* contains the following contributions: *Some Early New Jersey Place-Names*, by Cornelius C. Vermeule; *The Early Palatine Immigrations*, by A. Van Doren Honeyman; *The First Railroad in New Jersey*, by Anna M. Brakeley; and *The Final Century of Wampum Industry in Bergen County, New Jersey*, by Frances A. Westervelt.

The Pennsylvania Magazine of History and Biography for July contains *The Temperance Movement in Pennsylvania Prior to the Civil War*, by Asa Earl Martin; *The Completed Sets of the Signers of the Declaration of Independence, 1925*, by Charles F. Jenkins; and a continuation of *A Bibliography of the Works of Charles Godfrey Leland*, by Joseph Jackson.

When Sheridan Was in Oregon, by Turner F. Levens; *Narrative of Benjamin MacDonald*; and *Life at Old Fort Colville*, by William S. Lewis and Jacob A. Meyers, are three articles in the July issue of *The Washington Historical Quarterly*. A continuation of the *Diary of Wilkes in the Northwest* is also included.

Early Trails Through Oklahoma, by Grant Foreman; *Journal of the Adjourned Session of First General Council of the Indian Territory*; *Pioneers and Pioneering in Woods County*, by Jesse J. Dunn; and *Keeping the Record Straight*, by Paul Nesbitt, are the four papers in the *Chronicles of Oklahoma* for June.

H. M. Wagstaff is the editor of *The Papers of John Steele*, two additional volumes in the *Publications of the North Carolina Historical Commission*. John Steele was a prominent figure in North Carolina during the period following the adoption of the United States Constitution and was Comptroller of the United States Treasury from 1796 until 1802.

The September number of *The Register of the Kentucky State Historical Society* contains an installment of the *Department of State Archives—Lincoln County Tax Lists, 1789*. *Gleanings from the State Archives*; *Woodford County Notes*, by Wm. E. Railey; *Boone Day Celebration*; *Boone Memorial*; and an *Index to Shelby County Marriages, 1800–1830* are other papers in this number.

General Lafayette's Visit to Pittsburgh in 1825, by Charles W. Dahlinger; *Simon Girty and Some of His Contemporaries*, by T. L. Rodgers; a continuation of *Origin of the Names Given to the Counties in Pennsylvania*, by James McKirdy; and *David Bruce, Federalist Poet of Western Pennsylvania*, by Harry R. Warfel, are the contributions in the July issue of the *Western Pennsylvania Historical Magazine*.

Anglo-French Rivalry in the Cherokee Country, 1754–1757, by P. M. Hamer; *Humanizing the Slave Code of North Carolina*, by R. H. Taylor; and *The Prison Experiences of Randolph Shotwell—Fort Delaware*, by J. G. de Roulac Hamilton, are the three papers in *The North Carolina Historical Review* for July. Under the heading, *Some North Carolina Tracts of the 18th Century* is John Rutherford's "The Importance of the Colonies to Great Britain", edited by William K. Boyd.

Volume seven of the *Collections of the State Historical Society of North Dakota* contains a number of papers, among which are the following: *Pioneer Experiences of Horatio H. Larned*, by Ethel A. Collins; *Biographical Sketches of North Dakota Pioneers*; *Historical Notes on the Norwegians in the Red River Valley*, by Axel Tollefson; *The Norwegian Lutheran Church in the Red River Valley*, by Anton Hillesland; and *The History of Crary*, by Emma Severson.

Judge Thomas Stuart, an address by Park Marshall; *The Cruise of the Confederate Steamship "Shenandoah"*, by Charles Lining; *John Adair, the Entry-Taker*, by Kate White; *Notes on Jackson's Visit to New England, June, 1833*, by John Spencer Bassett; and *The First Volunteers from the "Volunteer State"*, by Sam'l C. Williams, are among the papers in the *Tennessee Historical Magazine* for July, 1924.

Illinois' First Citizen — Pierre Gibault, by Joseph J. Thompson; *The Curious Legend of Louis Philippe in Kentucky*, by Young E. Allison; *The Expulsion of the Franciscans from Prussia and Their Coming to the United States in the Summer of 1875*, by Eugene Hagedorn; and *The Christian Brothers at Joliet, Illinois* are four papers in the July number of the *Illinois Catholic Historical Review*.

Some Details of the Southern Overland Mail, by Rupert N. Richardson; *The Federal Indian Policy in Texas, 1845-1860*, by Lena Clara Koch; *From Texas to California in 1849*, a diary of C. C. Cox, edited by Mabelle Eppard Martin; *The City of Kent*, by Dorothy Waties Renick; and a continuation of *The Bryan-Hayes Correspondence*, edited by E. W. Winkler, are the chief contributions in the *Southwestern Historical Quarterly* for July.

Volume five of the Centenary Series of the *Publications of the Mississippi Historical Society* contains three contributions: *Peter Chester, Third Governor of the Province of British West Florida under British Dominion 1770-1781*, by Mrs. Dunbar Rowland; *A History of Mississippi College*, by W. H. Weathersby; and a journal kept by W. P. Chambers, who served in the Forty-sixth Regiment of Mississippi Infantry during the Civil War. The volume is edited by Dunbar Rowland.

The July number of the *Michigan History Magazine* contains the following contributions: *Alvah L. Sawyer; The Romance of Western Michigan*, by Arnold Mulder; *The Ford Historical Collections at Dearborn*, by H. M. Cordell; *Early Days Around Alpena*, by Arthur Scott White; *Alexander Henry and Wawatam*, by Marion Morse Davis; *The Original Cloverland Trail*, by Thomas Conlin; *Reminiscences of Copper Harbor*, by Anne Brockway Gray;

Reminiscences of Isle Royale, by William P. Scott; and *Michigan as Seen by an Early Traveler*, a continuation of the series being reprinted from Hoffman's *A Winter in the West*.

Monuments and Memorials in Missouri, by Sarah Guitar; *The Home Coming of Shelby's Men*, by Walter B. Stevens; *Charles V. Riley, Benefactor of Agriculture*, by Floyd G. Summers; *A Folk Tale of Johnny Appleseed*, by Iantha Castlio; *Recollections of the Civil War*, by John Henry Frick; *Missouri's State Museum*, by A. C. Burrill; *Personal Recollections of Distinguished Missourians — Hamilton R. Gamble*, by Daniel M. Grissom; *Little Visits with Literary Missourians — Sara Teasdale*, by Catharine Cranmer; and a tenth installment of *The New Journalism in Missouri*, by Walter B. Stevens, are the papers and articles in *The Missouri Historical Review* for July.

The January number of the *Ohio Archaeological and Historical Quarterly* contains a memorial to James Edwin Campbell, a former Governor of the State of Ohio, including several addresses by him. Among the other contributions are the following: *Commencement on the Ohio Canal at the Licking Summit*; *The Last Ohio Canal Boat*, by Albert N. Doerschuk; *Simon Kenton — Thomas W. Cridland, Pioneers*, by Walter D. McKinney; and *Presentation of Portraits of American Indians*, by Edward Orton, Jr. The April issue contains the following articles and papers: *Tecumseh and His Descendants*, by C. B. Galbreath; *Exploration of the Ginther Mound*, by H. C. Shetrone; *Early Newspapers of Cincinnati*, by V. C. Stump; *Thomas Jefferson's Views on Slavery*, by C. B. Galbreath; *The Doomed Soldier of Fort Meigs*, by Sarah J. Clarke; *The Battleship Ohio*; and *Ohio's Fugitive Slave Law*, by C. B. Galbreath.

The Quarterly of the Oregon Historical Society for June contains *The Verendrye Expeditions in Quest of the Pacific*, by Grace Flandreau; and *Journals of the La Vérendrye Trips to the Mandan Villages on the Missouri River in 1738-39 and to the Foothills of the Rocky Mountains in 1742-43*, with an introduction by Ralph Budd. The first of these journals is translated by Douglas Brymner; the second by Anne H. Blegen. Other papers in this number

are: *John Lyle and Lyle Farm*, by Julia Veazie Glen; *Extract from Exploration of the Oregon Territory, the Californias, and the Gulf of California, Undertaken During the Years 1840, 1841, and 1842*, by Eugene Duflot de Mofras, translated by Nellie Bowden Pipes; and *David Thompson, Pathfinder and the Columbia River*, by T. C. Elliott.

A Georgia Educational Movement During the Eighteen Hundred Fifties, by E. Merton Coulter; *The Founding and the Early History of the Atlanta Medical College, 1854-1875*, by F. Phinizy Calhoun; and *Science in Georgia, 1800-1830*, by Roswell Powell Stephens, are the three articles in the March number of *The Georgia Historical Quarterly*. This issue also contains the *Proceedings of the Georgia Historical Society in Honor of William Harden*. The number for June contains the following articles: *Spanish Resistance to the Carolina Traders in Western Georgia*, by Herbert E. Bolton; *The Confederate States Court for Georgia*, by Warren Grice; and *The Spaniards in Northern Georgia During the Sixteenth Century*, by J. G. Johnson.

Slavery on Louisiana Sugar Plantations, by V. Alton Moody; *Uncle Tom's Cabin and "The Spanish Post of the Adaias"*, by Phanor Breazeale; *The Tchoupitoulas Plantation*, by Meloney C. Soniat; *History of St. John the Baptist Parish*, by Lubin F. Laurant, are among the articles in the April, 1924, issue of *The Louisiana Historical Quarterly*. The number for July contains the following articles and papers: *The Smuggler St. Michel*, by Henry P. Dart; *Pages from a Journal of a Voyage Down the Mississippi to New Orleans in 1817*, edited by Felix Flugel; *The Morse Family in Louisiana*, by Edward C. Morse; *Flag Legislation in Louisiana*, by W. O. Hart; *Andres Molinary*, by Flo Field; *Charles M. Waterman, Mayor of New Orleans*, by Francis P. Burns; and continuations of the *Records of the Superior Council of Louisiana* and the *Index to the Spanish Judicial Records of Louisiana*.

The June issue of *Minnesota History*, formerly the *Minnesota History Bulletin*, is a Norse-American centennial number. It includes the following contributions: *Peter Testman's Account of His Experiences in North America*, by Theodore C. Blegen; *The Nor-*

wegian Government and the Early Norwegian Emigration, also by Theodore C. Blegen; *The Influence of the Minneapolis Flour Mills upon the Economic Development of Minnesota and the Northwest*, by Charles B. Kuhlmann, and *Captain Marryat in Minnesota, 1838*. Norman W. Kittson, *A Fur-trader at Pembina*, by Clarence W. Rife; *The State Historical Convention at Winona*; *Minnesota as Seen by Travelers*, an account by Lamare-Piquot; and *The Red River Trails* are four papers in the September issue.

The Wisconsin Magazine of History for June contains the following articles: *A Yankee Land Speculator in Wisconsin*, by Joseph Schafer; *Experiences of a Bohemian Emigrant Family*, by Ferdinand F. Doubrava; *The Story of Old Abe*, by David McLain; and *Early Farmers in Exeter*, by Elizabeth Moore Wallace. The heading *Documents* includes *A Trip Through Wisconsin in 1838*, by Bishop Jackson Kemper; and *Autobiography of Charles M. Baker*. William Penn Lyon, by Clara Lyon Hayes; *Origin of Wisconsin's Free School System*, by Joseph Schafer; *The Old Military Road*, by H. E. Cole; *The Life Story of a Milwaukee Merchant*, by Henry Stern; and *A Little Girl of Old Milwaukee*, by Martha E. Fitch, are the papers in the September issue of *The Wisconsin Magazine of History*. This number appears in a new cover design, the first State seal taking the place of the State flag. Under the heading *Documents* there is *A Winter's Journey from Milwaukee to Green Bay, 1843*, by Increase Allen Lapham.

The June number of *The Mississippi Valley Historical Review* contains the following papers and articles: *The Railroad Background of the Kansas-Nebraska Act*, by Frank H. Hodder; *Projects for Colonization in the South, 1684-1732*, by Verner W. Crane; *Western Aims in the War of 1812*, by Julius W. Pratt; and *State Rights and the Union Army*, by Fred A. Shannon. Under *Documents* is *A Journal of the Santa Fe Trail*, edited by William E. Connelley. *Spanish Intrigue in the Old Southwest: An Episode, 1788-89*, by Arthur P. Whitaker; *The Significance of the Latest Third Party Movement*, by Fred E. Haynes; *The Pacific Railway Issue in Politics Prior to the Civil War*, by Robert R. Russel; and *The Mississippi Valley and the Federal Judiciary, 1807-37*, by

Curtis Nettels, are the papers and addresses in the September issue. *A Journal of the Santa Fe Trail*, edited by William E. Connelley, is concluded in this number. The report of the Eighteenth Annual Meeting of the Mississippi Valley Association is the work of Bruce E. Mahan.

The January number of *The Florida Historical Society Quarterly* contains the following articles: *The Importance of Historical Societies*, by James O. Knauss; part one of *Jacksonville and the Seminole War, 1835-1836*; and *Narvaez and De Soto*, by A. H. Phinney. *Capital Removal; The Battleship Maine as a Florida State Board of Health Quarantine Vessel*, by Joseph Y. Porter; part two of *Jacksonville and the Seminole War, 1835-1836*; and *Education in Florida, 1821-1829*, by James O. Knauss, are the contributions in the number for April. The July issue contains the following: *The Occupation of Pensacola Bay, 1689-1698*, by William Edward Dunn; *Florida's Spanish Missions*, by A. H. Phinney; part three of *Jacksonville and the Seminole War*; and *The Settlement of Charlotte (Rolles Town), 1765*, by Carl Bohnenberger.

The Inception of the British Board of Trade, by Anna L. Lingelbach; *The Study of British Foreign Policy*, by C. K. Webster; *Plantations with Slave Labor and Free*, by Ulrich B. Phillips; and *Germany and the Spanish-American War*, by Lester B. Shippee, are the four articles in *The American Historical Review* for July. In the October issue there are the following articles: *A Medieval Florentine, his Family and his Possessions*, by Marchesa Niccolini; *French Aid Before the Alliance of 1778*, by Claude H. Van Tyne; *The Poor Whites of the Ante-Bellum South*, by Paul H. Buck; and *The European Powers and the French Occupation of Tunis, 1878-1881*, by William L. Langer. Under the heading *Notes and Suggestions* is *The Name "United States of America"*, by Edmund C. Burnett, and under *Documents* is *The Change of Secession Sentiment in Virginia in 1861*.

The January issue of the *Journal of the Illinois State Historical Society* contains the following papers and articles: *The Changing West*, by Laurence M. Larson; *Early Trails and Tides of Travel in the Lead Mine and Blackhawk Country*, by Edward L. Burchard;

My First Illinois Ancestor, by Hope Montgomery; and an *Autobiography of Clarissa Emely Gear Hobbs. Jacksonville and Morgan County — An Historical Review*, by Frank J. Heinl; *The Memoirs of John Henry*, edited by C. H. Rammelkamp; *The First Settlers in Morgan County*, by Frank J. Heinl; *Some Reminiscences of My Father, Murray McConnel*, by George Murray McConnel; *The Coming of the Portuguese*, by George Rawlings Poage; *The Organization of the First Presbyterian Church in Morgan County*, by Franklin D. Scott; *Progress in the Illinois Conference, 1824–1924*, by J. R. Harker; *Origin of Our State Charitable Institutions*, by Carl E. Black; *Illinois College at the Half Century*, by William Dustin Wood; and *Pioneer Women of Morgan County*, by Georgia L. Osborne, are papers and articles in the April issue of the same magazine.

ACTIVITIES

The Ontario Historical Society has issued its annual report for the year 1924.

The Jefferson County Historical Society met at Fairfield on June 30, 1925. W. G. Heaton gave a talk on his eight years in the Philippines.

The Hawkeye Natives held their annual picnic at Crapo Park, Burlington, on September 16, 1925. J. L. Edwards delivered the chief address.

The State Historical and Natural History Society of Colorado is undertaking the publication of a history of Colorado. The history is to be the work of various contributors and will be edited by Dr. James H. Baker.

The American Pioneer Settlers' Association of Scott County held its sixty-ninth annual meeting on August 26, 1925. Mrs. Henry Karwath was elected president, Mr. Karwath secretary, and Mrs. Miles Collins treasurer.

On July 8, 1925, the New York State Historical Association laid the corner stone of its new home, donated by one of its members and trustees, Horace A. Moses. The building, which is to be a

replica of the John Hancock house, is located at Ticonderoga, New York.

A meeting of the Historical Society of Ida County was held on June 8, 1925, at Ida Grove. It was decided to make a list of former Ida County officers, judges, attorneys, and Ida Grove officials and to compile a roster of the G. A. R. and World War veterans.

The Indiana Historical Society held its summer meeting at South Bend on August 28 and 29, 1925, as the guest of the Northern Indiana Historical Society. The program included a paper by James A. Woodburn on "Pioneers and Pathfinders of New France", and one by Otto M. Knoblock on "Early Navigation on the St. Joseph River".

The Minnesota Historical Society will conduct a bureau of historical information at the Minnesota State Fair. Persons in charge of this booth will be prepared to answer questions concerning State history and will also receive for the Society any papers or historical relics which may be presented.

The Worth County Historical Society collected a large number of historical relics which were displayed at the community building at Northwood on July 13, 1925, in honor of the Norwegian centennial celebration.

The Howard County Historical Society is completing its historical building — a log cabin on the fair grounds at Cresco. An old-time rail fence surrounds the memorial to the pioneers. Relics of former days are being collected for preservation in the log building. The program of dedication occurred on August 19, 1925, during the fair.

Norwegians of Worth County are planning the presentation of a log house to the Worth County Historical Society in commemoration of their hundredth anniversary in America. One of the old cabins still in existence will be moved into the park at Northwood where the city council has given the historical society permission to locate the pioneer cabin near the community building.

The fourth State historical convention under the auspices of the Minnesota Historical Society was held at Winona, Minnesota, on

June 17, 18, 1925. Among the features of the two-day session were the following papers and addresses: "Minnesota: An Historical Interpretation", by Theodore C. Blegen; "Minnesota as Seen by Famous Travelers", by Bertha L. Heilbron; "A New Interpretation of the Voyages of Pierre D'Esprit Radisson", by Arthur T. Adams; "Life in a Pioneer Minnesota College, Hamline University", by Hellen Asher; "The French on the Upper Mississippi", by Louise Phelps Kellogg; "A Typical Frontiersman: Joseph Renshaw Brown", written by William W. Folwell and read by Solon J. Buck; and "The Fur Trade in Southern Minnesota during the British Regime", by Alice Smith.

THE STATE HISTORICAL SOCIETY OF IOWA

A course of radio lectures dealing with early Iowa history will be given by Bruce E. Mahan, associate editor of the State Historical Society of Iowa, from Station WSUI, beginning on October 5, 1925, and continuing every Monday night for twelve weeks.

"The Writing and Publication of Iowa's History" was the subject of an address by Bruce E. Mahan of the State Historical Society before the Rotary Club at Ottumwa in the afternoon of July 13, 1925. That evening he gave an address before the Wapello County Historical Society.

The State Historical Society of Iowa has recently printed *The Story of the 168th Infantry*, by John H. Taber, formerly a lieutenant in Company K. This regiment was Iowa's contribution to the famous Rainbow Division and saw a long period of active service. The history appears in two volumes of some four hundred pages each and contains illustrations.

The State Historical Society of Iowa has recently distributed a fourth volume in the *Applied History Series*. This is *County Government and Administration in Iowa*, a volume of over seven hundred pages, prepared under the direction of Professor Benj. F. Shambaugh, the editor of the series. Eight men collaborated in the preparation of the volume, each one working on a particular county office or phase of administration. The first monograph is a definition of the county in Iowa; nine present the legal and prac-

tical aspects of the elective county officers; seven deal with special phases of administration in the county; while the last of the series presents some suggestions for reform in county government.

The following persons have recently been elected to membership in the Society: Mr. Jesse T. Carpenter, Durham, North Carolina; Mr. Hubert Carr, Manchester, Iowa; Mr. E. S. Van Gorder, Audubon, Iowa; Mrs. W. J. Harter, Iowa City, Iowa; Dr. W. R. McCray, Charles City, Iowa; Mr. S. C. E. Powers, Iowa City, Iowa; Miss June Connor, Sioux City, Iowa; Mr. Varick C. Crosley, Webster City, Iowa; Miss Gertrude F. Eaton, Sioux City, Iowa; Mr. Will J. Hayek, Iowa City, Iowa; Mr. John P. Lund, St. Ansgar, Iowa; Mr. H. S. McVicker, Sigourney, Iowa; Mr. Kenneth L. Mosher, Salem, Iowa; Mr. D. T. Stockman, Sigourney, Iowa; Mrs. R. P. Taylor, Cedar Rapids, Iowa; Mr. W. R. Watsabaugh, Center Point, Iowa; Mr. W. D. Glasgow, Mechanicsville, Iowa; Mr. Harry E. Kiestler, Waterloo, Iowa; Miss Elizabeth C. Morse, Atlantic, Iowa; Mr. W. M. Rosen, Ogden, Iowa; Mrs. Agnes B. Royce, Iowa City, Iowa; Mr. A. R. Tipton, Muscatine, Iowa; Mr. H. Arnold Bennett, Buffalo, New York; Mr. Sidney L. Chandler, Mt. Vernon, Iowa; Mr. S. G. Fouse, Lisbon, Iowa; Miss Martha McClure, Mt. Pleasant, Iowa; Mrs. J. J. Smith, Ottumwa, Iowa; Mr. James E. Thomas, Des Moines, Iowa; Miss Alice E. Van Vliet, Dunkerton, Iowa; and Mr. Bruce A. West, Cedar Rapids, Iowa. The following persons have recently been enrolled as Life Members: Mr. H. W. Byers, Des Moines, Iowa; Mr. C. F. Clark, Cedar Rapids, Iowa; Mr. Geo. W. Clarke, Adel, Iowa; Mr. A. B. Cummins, Des Moines, Iowa; Mr. A. F. Dawson, Davenport, Iowa; Mr. Chas. J. Deacon, Cedar Rapids, Iowa; Mr. John S. Ely, Cedar Rapids, Iowa; Mr. S. G. Frink, Tipton, Iowa; Mr. Chas. J. Fulton, Fairfield, Iowa; Mr. James W. Good, Chicago, Illinois; Mr. John M. Grimm, Cedar Rapids, Iowa; Mr. Willis G. Haskell, Cedar Rapids, Iowa; Mr. Roger Leavitt, Cedar Falls, Iowa; Mr. Wesley Martin, Webster City, Iowa; Mr. Byron W. Newberry, Strawberry Point, Iowa; Mr. Ralph Otto, Iowa City, Iowa; Mr. Paul F. Peck, Grinnell, Iowa; Mr. Chas. E. Ransier, Waterloo, Iowa; Mr. Milton Remley, Iowa City, Iowa; Mr. Geo. L. Schoonover, Cedar Rapids, Iowa; Mr. E. M. Scott, Cedar Rapids, Iowa; Mr. C. E. Seashore, Iowa City, Iowa;

Miss Imelda Shanklin, Viola, Iowa; Mr. Frank Shinn, Carson, Iowa; Mr. J. V. Snyder, Delmar, Iowa; Mr. W. N. Treichler, Cedar Rapids, Iowa; Mr. Jacob Van der Zee, Iowa City, Iowa; Mrs. Vernon R. Seeburger, Des Moines, Iowa; Mr. Maro Johnson, Chicago, Illinois; Mr. J. H. Henderson, Des Moines, Iowa; and Miss Sara M. Riggs, Cedar Falls, Iowa.

NOTES AND COMMENT

The South Bethel Methodist Episcopal Church near Tipton gave an historical pageant on a field near the church on September 22, 1925.

The Delhi Woman's Club is planning a memorial tablet on the lot where the house occupied by J. L. McCreery formerly stood. Mr. McCreery was the author of the well known poem *There Is No Death*, which was long attributed to Bulwer-Lytton.

The Fairfield chapter of the D. A. R. provided a marker for the site of the first State Fair held at Fairfield on October 25, 26, and 27, 1854. The dedication occurred on September 24, 1925.

On August 19, 1925, a pageant commemorating the centennial of the signing of the peace treaty at Prairie du Chien in 1825 was held on the "Heights" at McGregor, Iowa, in connection with the School of Wild Life Protection and the Midwestern Bookfellows Meeting.

On June 14, 1925, the D. A. R. chapter at Ames dedicated a marker at the corner of Douglas Avenue and Fifth Street where the first home in Ames was established in 1864 by Noah and Matilda Webster. The dedicatory address was given by Mrs. Louis B. Schmidt.

The fortieth annual reunion of the early settlers of Madison and Warren counties was held at St. Charles on August 13, 1925. Judge Hubert Utterback of Des Moines gave the principal address. At the business meeting the following officers were elected for 1926: president, Ed Smith; secretary, H. A. Mueller; and treasurer, J. F. Johnston.

The county supervisors of Ida County have made arrangements to have glass cases placed in the halls of the courthouse, in which articles of historical interest may be placed. The county historical society will assist in securing these relics which will be loaned and may be removed by the owner at any time.

A regional meeting of the American Library Association will be held at Sioux City on October 13-16, 1925. This will take the place of the Iowa State meeting usually held at this season. Among the features of the program will be a lecture recital by Lew Sarett and a lecture by Arthur E. Bostwick on his trip through China.

The Dolliver Memorial Park at Fort Dodge was dedicated on June 29, 1925. Professor L. H. Pammel of Ames told of the early life of Jonathan Prentiss Dolliver for whom the park was named and presented the park to the State. It was accepted by J. C. McClune, State Auditor. The chief address was given by James B. Weaver of Des Moines. Miss Frances Dolliver unveiled the Dolliver tablet.

The annual reunion and picnic of the Madison County pioneers was held at Winterset on September 7, 1925. Formal presentation was made of the more than one hundred acres of land to be added to the Winterset city park under the will of A. W. Crawford. An address by Claude R. Porter was one of the features of the program. Reminiscences by Judge Lewis were read by Ed M. Smith.

The new Linn County courthouse was dedicated on July 6, 1925. Dr. Benjamin F. Shambaugh, the Superintendent of the State Historical Society of Iowa, gave the principal address. The parade was characterized by representations of the development of Linn County from the earliest days to the present.

An oil painting of former Governor Cyrus Clay Carpenter will be unveiled and presented to the Carpenter School at Fort Dodge, Iowa, on October 5, 1925. This memorial is presented by Mrs. Susan C. Carpenter, the widow of Governor Carpenter, and Cyrus Clay Carpenter, his nephew, under the auspices of the Iowa Division Sons of Veterans and their auxiliary, in coöperation with the Carpenter Parent Teachers Association.

On September 13, 1925, a bronze tablet was placed at the grave of Johan Gaertner, who was in Napoleon's army during the Russian campaign. He is said to be the only veteran of Napoleon's armies buried in Iowa. St. Anthony's Chapel where the burial was made is located some three and one-half miles southwest of Festina and is

said to be the smallest church in the State. The Waucoma Chapter of the D. A. R. was in charge of the ceremonies which included an address by Ben Webster, State commander of the American Legion, and an historical sketch of St. Anthony's Chapel, by Mar Huber.

Ralph Emerson Twitchell, well-known as a historian of the Southwest, died at Los Angeles, California, on August 26, 1925. Colonel Twitchell had served on the Board of Managers of the School of American Research, as a regent of the Museum of New Mexico, and as president of the New Mexico Historical Society. He was also the author of several books and articles on southwestern history, among which was a two-volume work on *Leading Facts of New Mexican History*.

Dr. Asa Bosworth Bowen, one of the pioneer physicians of Iowa, died at his home at Maquoketa on April 16, 1925. Dr. Bowen was born at Eastford, Connecticut, on April 12, 1842, and came to Maquoketa in 1869 where he practiced medicine until his death. His wide interest in the community, in addition to his professional interest, is evidenced by the fact that he was a member of the Iowa State Medical Society since 1872, a member of the American Medical Association, and served as one of the pension examiners of Jackson County, as railroad surgeon for the Chicago and Northwestern Railroad, and as one of the Jackson County board of examiners during the World War. He was a thirty-second degree Mason, a member of the Iowa Society of the Sons of the American Revolution, and a member of the State Historical Society, had served as president of one bank and vice president of another, and had been commander of the local G. A. R. post.

CONTRIBUTORS

JACOB ARMSTRONG SWISHER, Research Assistant in the State Historical Society of Iowa. (See THE IOWA JOURNAL OF HISTORY AND POLITICS for January, 1924, p. 160.)

AN INDEX
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